

U.S. Department of Justice

Criminal Division

Joseph Palazzo

1400 New York Avenue N.W.
Trial Attorney Washington, DC 20530

Money Laundering and Asset Recovery Section

(202)445-7910 Cell
(703)488-2358 Desk

March 16, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to recommend Jacqueline L. Barkett for a clerkship in your chambers. Ms. Barkett has been a colleague for nearly four years at the Department of Justice and is my co-counsel in *United States v. Kassim Tajideen and Imad Hassoun*, 1:17-CR-46-RBW, a complex criminal matter we are prosecuting in the U.S. District Court in the District of Columbia. We also serve together on the Hizballah Narcoterrorism Finance Team chaired by Criminal Division Principal Assistant Attorney General John P. Cronan.

Ms. Barkett stands out as a skilled attorney who writes exceptionally well and displays sound legal judgment. We began working together while she was on detail to the National Security Section of the U.S. Attorney's Office for the District of Columbia. After being assigned during the investigative stage of a case moving rapidly toward the charging of foreign actors with multiple conspiracies for money laundering and IEEPA violations, Ms. Barkett immediately established herself as a reliable writer and researcher eager to tackle important legal questions under harsh time pressures. Our investigation involved a sophisticated fraud and sanctions violation scheme, complete with a web of nearly one hundred front companies, a myriad of complex financial transactions, and evidence from over fifty different sources of information in multiple languages. Ms. Barkett absorbed these challenges and met them with intellect, creativity, and old-fashioned hard work. Most helpful to me beyond her ability to think and act quickly, has been her aptitude for anticipating legal problems before they arise. She has constructively confronted me, as well as other senior members of the team, on important legal and practical issues that she was first to see. More than just an issue spotter, Ms. Barkett has constantly displayed a willingness to solve problems and keep our team moving toward a successful prosecution. In particular, she proved to be absolutely invaluable during a compressed period after the arrest of our lead defendant, when she played an integral role drafting and reviewing a foreign extradition document package, four internal legal memoranda, two agent affidavits, and the government's response to eleven motions or filings by the defendant, seven of which were dispositive. If it wasn't for her youthful appearance, Ms. Barkett would be mistaken for a multi-decade veteran.

Beyond her writing ability and legal acumen, Ms. Barkett also receives my highest endorsement for her character and personality. She is pleasant and easy to work with despite being in a persistently high-pressure environment full of egos and long hours. Whether facing a seemingly impossible court filing deadline, meeting with a particularly nasty defense attorney, or dealing with a micromanaging supervisor, Ms. Barkett has been unflappable for the past four years. She is a favorite of agents, fellow prosecutors, and interagency colleagues alike. I can only conclude that this is due to her sincere respect for others, as well as a genuine, good-natured disposition. In part, I am saddened to be writing this letter, as it means I am sure to lose my finest partner here at the Justice Department. But I am also confident that Jacqueline L. Barkett will honorably serve in your chambers and prove to be an invaluable clerk. Thank you for considering her application.

If you would like to discuss her candidacy further, please do not hesitate to reach out to me directly.

Sincerely,

Joseph Palazzo

Joseph Palazzo - Joseph.Palazzo@crm.usdoj.gov - 202-445-7910

JACQUELINE L. BARKETT
(858) 349-4315 | jbarkett22@gmail.com

This writing sample is a draft memo analyzing whether 18 U.S.C. § 112(a) or (b) qualifies as a ‘crime of violence.’ This memo was written before the Supreme Court’s recent decision in Sessions v. Dimaya, 138 S. Ct. 1204 (2018). This a second draft that was only slightly edited.

United States v. S.M.A., No. 16-476
Research Re: Transfer to Adult Status

You have asked me to research two questions relating to the transfer of a juvenile to adult status: (1) Does a charge pursuant to 18 U.S.C. § 922(x)(2) qualify a juvenile for a discretionary transfer to adult status? (2) Does a charge pursuant to 18 U.S.C. § 112(a) or (b) qualify as a “crime of violence” to justify discretionary transfer to adult status? The first issue appears to be an open question, though it seems unlikely that a court would transfer a juvenile to adult status on the basis of a § 922(x) charge alone under an “interests of justice” standard. As to the second question, there is a strong argument that the § 112(a) charge against S.M.A. qualifies as a crime of violence. A violation of § 112(b) would not support a transfer because it is a misdemeanor offense, and the transfer statute requires a charge which “if committed by an adult would be a felony that is a crime of violence.” 18 U.S.C. § 5032.

[The answer to the first part of this questions has been edited out for the part that I did not write]

Transfer on the Basis of a “Crime of Violence”

The discretionary transfer provision in § 5032 applies to a juvenile who commits an act that “if committed by an adult would be a felony that is a crime of violence.” S.M.A. has been charged with violations of 18 U.S.C. § 112(a) and (b). Section 112(a) provides for imprisonment of up to three years for anyone who “assaults, strikes, wounds, imprisons, or offers violence to a foreign official . . . or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, . . . or attempts to commit any of the foregoing.” The statute imposes a maximum ten-year penalty if the offender “uses a deadly or dangerous weapon, or inflicts bodily injury” in the commission of the offense. § 112(a). Section § 112(b) is a misdemeanor offense, subject to up to six months’ imprisonment, that prohibits willfully intimidating, coercing, threatening, or harassing a foreign official, obstructing foreign officials in the performance of their duties, and attempting to do the same.

Because § 112(b) is a misdemeanor offense, it would not qualify under § 5032 as an offense justifying transfer to adult status, regardless of whether it is a crime of violence. Section 112(a) is a felony offense that can be committed by an adult, so it would qualify so long as it is a crime of violence.

While § 5032 does not define crime of violence, it adopts the definition set forth in 18 U.S.C. § 16. *See United States v. Juvenile Female*, 566 F.3d 943, 947 (9th Cir. 2009) (adopting this approach); S. Rep. No. 225, 98th Cong., 2d Sess. 389 & n.7, reprinted in 1984 U.S.C.A.N. 3182, 3529 & n.7. Under § 16, the term “crime of violence” means:¹

¹ The Supreme Court has granted certiorari with respect to the question whether 18 U.S.C. § 16(b), as incorporated into the Immigration and Nationality Act’s provisions governing removal, is unconstitutionally vague. *See Sessions v. Dimaya*, No. 15-1498. However, *Dimaya* is on review from the Ninth Circuit, which held § 16(b) to be unconstitutionally vague. *See Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015). That holding remains binding in this case. Because the Supreme Court is highly unlikely

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

In construing § 16, “we cannot forget that we ultimately are determining the meaning of the term ‘crime of violence.’ The ordinary meaning of this term, combined with § 16’s emphasis on the use of physical force against another person . . . suggests a category of violent, active crimes.” *Juvenile Female*, 56 F.3d at 947 (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11 (2004)).

“When exercising jurisdiction over a juvenile,” the Ninth Circuit follows the “‘categorical approach’ to determine whether an offense is a crime of violence.” *Id.* at 946. “Under the categorical approach, the generic, rather than the particular, nature of the predicate offense is determinative in defining a crime of violence.” *Id.* (internal quotation marks omitted). “A crime ‘qualifies as a crime of violence . . . if and only if the full range of conduct covered by it falls within the meaning of that term.’” *Id.* (quoting *Valencia v. Gonzales*, 439 F.3d 1046, 1049 (9th Cir. 2006)). However, “[t]he categorical approach does not focus on a criminal statute in its entirety, but on the offense or crime.” *Id.* at 947.

United States v. Juvenile Female provides particularly strong support for the position that the § 112(a) charge against S.M.A. qualifies as a crime of violence. In *Juvenile Female*, the juvenile was charged with delinquency in violation of 18 U.S.C. § 111(a) and (b) (assaulting a federal officer with a deadly or dangerous weapon) after she had attempted to resist apprehension by a Border Patrol agent and stabbed the agent with a knife.² 566 F.3d at 944–45. The juvenile challenged the district court’s jurisdiction over the delinquency proceeding, arguing that § 111 is not categorically a crime of violence. *Id.* at 945.

to decide this issue prior to the government’s transfer motion in this case, this memo analyzes § 112(a) only with respect to § 16(a)’s elements-based definition.

² 18 U.S.C. § 111 provides:

(a) In general.—Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person’s term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

(b) Enhanced penalty.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

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The Ninth Circuit began its analysis by noting that § 111(b) states a separate offense from § 111(a)—“assault involving a deadly or dangerous weapon or resulting in bodily injury”—and rejected the juvenile’s contention that this offense “subsumes five other non-assaultive offenses, because it also lists those who resist, oppose, impede, intimidate, or interfere with designated officers.” *Id.* at 946–47. The court held that “an ‘assault involving a deadly or dangerous weapon or resulting in bodily injury,’ under 18 U.S.C. § 111, is, categorically, a crime of violence.” *Id.* at 947. Dividing the offense into two variants—“(1) assault involving a deadly or dangerous weapon, and (2) assault resulting in bodily injury”—the Ninth Circuit looked to its prior case law interpreting the law of assault and explained:

A defendant charged with the first variant, assault with a deadly or a dangerous weapon, must have always “threatened [the] use of physical force,” 18 U.S.C. § 16(a), because he or she will have either made a “wilful attempt to inflict injury” or a “threat to inflict injury,” [*United States v. Chapman*, 528 F.3d 1215, 1219–20 (9th Cir. 2008)] (internal quotation omitted), with an object that “may endanger the life of or inflict great bodily harm on a person,” [*United States v. Sanchez*, 914 F.2d 1355, 1358 (9th Cir. 1990)]. Similarly, a defendant charged under the second variant, assault resulting in bodily injury, necessarily must have committed an act of force in causing the injury. Thus, both variants are “crimes of violence” pursuant to 18 U.S.C. § 16(a).

Juvenile Female, 566 F.3d at 947–48.³

This logic appears to apply fairly well to § 112(a). Section 112(a) states at least two offenses: the baseline offense, punishable by three years’ imprisonment, and the enhanced penalty offense for using a deadly or dangerous weapon or inflicting bodily injury, punishable by up to ten years’ imprisonment. Even though these offenses are not divided into separate subsections as in § 111, the facts that they carry different penalties and that the enhanced penalty provision has an added element are sufficient to make them separate offenses. *See Mathis v. United States*, 136 S. Ct. 2243, 2256 (2016) (“If statutory alternatives carry different punishments, then . . . they must be elements.”). Thus, like § 111(b), § 112(a) states an offense of assault involving a deadly or dangerous weapon or resulting in bodily injury. And here, S.M.A. was charged with this enhanced penalty offense. *See* Information, Count One (charging the use of a deadly or dangerous weapon).

S.M.A. may argue that, unlike § 111, the various means of committing § 112(a) have not been read to also require an underlying assault. *See Chapman*, 528 F.3d at 1219 (“[W]hile a

³ The panel also concluded that assault involving a deadly or dangerous weapon or resulting in bodily injury states a crime of violence pursuant to § 16(b). *Juvenile Female*, 566 F.3d at 948 (“[B]ecause the offense is a felony, section 16(b) also applies. Section 16(b) sweeps more broadly than section 16(a) because it encompasses offenses where a person merely disregards a *risk* that physical force will be used in commission of the offense. For the same reasons described above, the two variants on this crime will always involve a substantial risk that physical force against the person may be used, even if physical force is not an element of the offense. (citations omitted)).

defendant could be charged with resisting, opposing, impeding, intimidating, or interfering, he could not be convicted unless his conduct *also* amounted to an assault.”); *United States v. Dupree*, 544 F.2d 1050, 1051 (9th Cir. 1976) (defining assault as “either a willful attempt to inflict injury upon the person of another, or . . . a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm”). According to this argument, *Juvenile Female* would be inapposite because its logic assumes assaultive conduct for any form of the offense. And, the argument would go, some of the alternative forms of conduct in § 112(a) are non-assaultive and therefore non-violent. Most notably, imprisoning someone, at least in some circumstances, may not qualify as a crime of violence. Cf. *United States v. Hernandez-Hernandez*, 431 F.3d 1212, 1217 (9th Cir. 2005) (applying the modified categorical approach to California’s false imprisonment statute to distinguish between false imprisonment through the use of violence, which constitutes a crime of violence, and false imprisonment by deceit or fraud, which does not).

This is not a strong argument on the face of § 112(a). The range of conduct prohibited by § 112(a) is not as broad as that listed in § 111, so the relationship to traditional assault is much clearer even absent the Ninth Circuit’s gloss on § 111. The vast majority of the prohibited conduct—assaults, strikes, wounds, or offers violence to; “makes any other violent attack upon the person or liberty of such person”; and “makes a violent attack upon his official premises . . . if likely to endanger is person or liberty”—fit within the definition of assault. While “imprisons” arguably might not meet the definition of assault in some circumstances, this concern is significantly diminished in the context of the enhanced penalty offense: to the extent a defendant were to imprison someone using “a deadly or dangerous weapon” or while inflicting bodily injury, this form of imprisonment seems to fall more squarely within the definition of assault. Thus, with respect to the enhanced penalty offense—with which S.M.A is charge—*Juvenile Female* is squarely on point.

Finally, courts have acknowledged that § 112(a) focuses on violent conduct, which may aid the government’s argument that the included offenses are crimes of violence. See *United States v. Gan*, 636 F.2d 28, 30 (2d Cir. 1980) (“The distinction between s 112(a) and s 112(b) lies in whether the act was violent Section 112(a) punishes violent conduct only.”) Moreover, courts have explained that § 112 was enacted to conform U.S. laws to international conventions “intended to protect foreign officials and diplomats from various terroristic acts, including murder, kidnapping and assault, and threats or attempts to commit such acts.” *CISPES (Comm. in Solidarity with People of El Salvador) v. FBI*, 770 F.2d 468, 472 (5th Cir. 1985) (citing 1976 U.S.C.C.A.N. 4480, 4482). Thus, there is a strong argument that hypothetical non-violent ways of committing a violation of § 112(a) (e.g., imprisonment by deceit) are not within the scope of the statute.

* * *

In sum, § 112(a) appears to be the government’s strongest charge for obtaining a transfer to adult status. The government should not rely solely on the § 922(x) argument, but it could make both the § 112(a) and § 922(x) arguments. Depending on strategic considerations, the government also could pursue the possibility of filing a Superseding Information adding other offenses enumerated in § 5032.

DRAFT

Applicant Details

First Name	Ava
Last Name	Barzegar
Citizenship Status	U. S. Citizen
Email Address	avba@pennlaw.upenn.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>14 Farrington Lane</div> <div>City</div> <div>Branchburg</div> <div>State/Territory</div> <div>New Jersey</div> <div>Zip</div> <div>08876</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	9084426519

Applicant Education

BA/BS From	University of Pennsylvania
Date of BA/BS	May 2019
JD/LLB From	University of Pennsylvania Law School
	https://www.law.upenn.edu/careers/
Date of JD/LLB	May 18, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	University of Pennsylvania Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Galbraith, Jean
jgalbraith@law.upenn.edu
215-746-7824
Ossei-Owusu, Shaun
oss@law.upenn.edu
215-898-5071
Pierce, Sarah
pierce3@law.upenn.edu
215-898-7424

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Ava Barzegar

42 S. 15th Street, Apartment 1709, Philadelphia, PA 19102
avba@pennlaw.upenn.edu | (908) 442-6519

April 14, 2022

The Honorable Lewis Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 701
New York, NY 10007-1312

Dear Judge Liman,

I am a third-year law student at the University of Pennsylvania Law School. I am writing to submit my application for a clerkship in your chambers beginning in 2024 or a subsequent year when a position is available.

Growing up as an Iranian American, I witnessed the effects of Iran's failed justice system and developed a strong appreciation for the American legal system's ideal of substantive and procedural fairness. During my time at Penn Law, I have dedicated myself to developing critical thinking, research and legal writing skills. In particular, as a Littleton Fellow instructor for the Legal Practice Skills program, I have refined my legal writing skills by critiquing briefs and memos for fifteen first-year students. Following law school, I hope to pursue government work and serve the community while maintaining a steady commitment to equal justice. I am particularly interested in clerking in your chambers because I hope to develop a strong understanding of the inner workings of the federal court system and learn how you determine the proper outcome across a broad range of cases.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Jean Galbraith (jgalbraith@law.upenn.edu, 215-746-7824), Professor Sarah Pierce (pierce3@law.upenn.edu, 215-898-7424), and Professor Shaun Ossei-Owusu (oss@law.upenn.edu, 215-898-5071) are also included. Please let me know if any other information would be useful. Thank you.

Respectfully,

Ava Barzegar

Encls.

Ava Barzegar

42 S. 15th Street, Apartment 1709, Philadelphia, PA 19102
avba@pennlaw.upenn.edu | (908) 442-6519

EDUCATION

University of Pennsylvania Law School, Philadelphia, PA

J.D. Candidate, May 2022

- Honors: University of Pennsylvania Law Review, *Senior Editor*
Dean's Prize recipient (awarded to students obtaining the highest grades in the 1L year)
Littleton Fellow 2021-2022 (instruct first-year students in Legal Practice Skills course)
- Activities: International Refugee Assistance Project, *Volunteer*
Penn Law Women's Association, *Member*
Morris Fellow (mentor a first-year law student)
- Comment: *Reimagining Remedies for the Harms of Catcalling*

University of Pennsylvania, Philadelphia, PA

B.A., *summa cum laude* | Major: Political Science, Minor: French and Francophone Studies, May 2019

- Honors: Phi Beta Kappa
Honors Distinction in Political Science
Pi Delta Phi French National Honor Society
Pi Sigma Alpha Political Science Honors Society
- Activities: Penn Persian Society, *Vice President*
Quaker Corner, *Customer Service Representative*
- Thesis: *Analyzing the Impact of Repressive Regimes on Partisanship of Vietnamese, Cuban, and Iranian Immigrants in the United States*

PROFESSIONAL EXPERIENCE

SeniorLAW Center, Philadelphia, PA

January 2022 – present

Legal Extern, Tenant Rights Project

- Conduct client intake, draft petitions and discovery requests, engage in community advocacy, represent a client in Municipal Court

Davis Polk & Wardwell, New York, NY

May 2021 – July 2021

Summer Associate (Postgraduate return offer accepted)

- Research scope of civil code disclosure provision, examine skills and experience of board directors for corporate governance treatise, analyze material contracts, revise asylum brief

Weil, Gotshal & Manges, New York, NY

June 2020 – August 2020

Summer Associate, Diversity Scholar (Summer return offer and postgraduate offer extended)

- Attended practice area presentations, learned financial analysis and negotiation skills through courses taught by Columbia Law School faculty, performed in an oral argument workshop
- Created a protocol for identifying prospective plaintiffs for the ACLU of Louisiana Justice Lab's initiative to bring mass litigation to put racist policing on trial

University of Pennsylvania, Philadelphia, PA

December 2015 – May 2019

Senior Research Assistant for Dr. Daniel Q. Gillion

- Led team of 19 research assistants in gathering information on racial policy issues, coding race-related policies, offering comments on contemporary race issues, completing grant applications, and managing financial statements

Penn Model Congress, Philadelphia, PA

September 2015 – May 2019

President

- Directed legislative debate conference for approximately 700 high school students
- Managed finances with a \$200,000 budget by negotiating contracts with hotels, venue coordinators, web developers, etc., collecting payments from advisors, and coordinating with Office of Student Affairs
- Led general body meetings, coordinated special programs, led Opening Ceremony, developed new website

Rotaract Club of Philadelphia, Philadelphia, PA

January 2016 – May 2019

- Led 25 members in university branch of Rotary International community service organization engaging in both domestic and international volunteer projects offering about 10-12 community service opportunities each month

Manhattan District Attorney's Office, New York, NY

May 2018 – August 2018

College Intern, Cybercrime & Identity Theft Bureau

- Analyzed legal and non-legal documents through search warrant and social media compliance review
- Performed research, observed witness interviews, participated in community outreach programs, attended trials, annotated jail calls, participated in proffers and shadowed ADAs in court sessions and arraignments

Philadelphia History Museum, Philadelphia, PA

May 2017 – August 2017

Intern

- Led student tours, assisted with development projects, and conducted research for exhibitions and events

LANGUAGES & INTERESTS

- Professional working proficiency in French and conversational fluency in Farsi; proficiency in R
- Landscape painting, salsa and bachata dancing, urban explorer, Sudoku and Tetris master

Ava Barzegar

42 S. 15th Street, Apartment 1709, Philadelphia, PA 19102

avba@pennlaw.upenn.edu | (908) 442-6519

AT THE LAW SCHOOL

* * * * * **ACADEMIC PROGRAM** * * * * *

School: LAW
Division: LAW
Degree Program: JURIS DOCTOR
Major: LAW

* * * * * **UNIVERSITY OF PENNSYLVANIA COURSE WORK** * * * * *

Fall 2019		LAW			
LAW	500	Civil Procedure (Burbank) - Sec 2			
			4.00	SH	A
LAW	502	Contracts (Galbraith) - Sec 2B			
			4.00	SH	A
LAW	504	Torts (Hoffman,A) - Sec 2			
			4.00	SH	A
LAW	510	Legal Practice Skills (Pierce) -			
		Sec 2B	4.00	SH	H
LAW	512	Legal Practice Skills Cohort			
		(Murphy)	(0.00)	SH	CR
		Term Statistics:	16.00	SH	
		Cumulative:	16.00	SH	
Spring 2020		LAW			
LAW	501	Constitutional Law (Berman) - Sec			
			4.00	SH	CR
LAW	503	Criminal Law (Ossei-Owusu) - Sec			
		2B	4.00	SH	CR
LAW	510	Legal Practice Skills (Pierce) -			
		Sec 2B	2.00	SH	CR
LAW	512	Legal Practice Skills Cohort			
		(Murphy)	(0.00)	SH	CR
LAW	734	Reproductive Rights and Justice			
		(Roberts)	3.00	SH	CR
LAW	780	Immigration Law (Chang)	3.00	SH	CR
		Term Statistics:	16.00	SH	
		Cumulative:	32.00	SH	
Fall 2020		LAW			
LAW	508	Property (Parchomovsky)	3.00	SH	A
LAW	555	Professional Responsibility			
		(Sandman)	2.00	SH	B
LAW	600	Accounting (Brotman)	2.00	SH	A+
LAW	622	Corporations (Skeel)	4.00	SH	A-
LAW	802	Law Review - Associate Editor			
			1.00	SH	CR
LAW	997	Positive Psychology in Legal			
		Practice (Hollway)	2.00	SH	A
		Term Statistics:	14.00	SH	
		Cumulative:	46.00	SH	
Spring 2021		LAW			
LAW	597	Federal Prosecution in Practice			
		(Kehner/Pozos)	2.00	SH	A-
LAW	696	Constitutional Criminal Procedure			
		(Rudovsky)	3.00	SH	A
LAW	743	Complex Litigation			
		(Burbank/Scirica)	3.00	SH	A-

LAW	802	Law Review - Associate Editor	(0.00)	SH	CR
LAW	928	International Arbitration (Salas)	3.00	SH	A-
LAW	999	Independent Study (Ossei-Owusu)	3.00	SH	A
		Term Statistics:	14.00	SH	
		Cumulative:	60.00	SH	

Fall 2021

LAW

LAW	607	Antitrust (Hovenkamp)	3.00	SH	A
LAW	617	Conflict of Law (Roosevelt)	3.00	SH	A-
LAW	631	Evidence (Ferzan)	4.00	SH	A
LAW	802	Law Review - Senior Editor	(1.00)	SH	NR
LAW	803	Littleton Fellow (Pierce)	(4.00)	SH	NR
		Term Statistics:	10.00	SH	
		Cumulative:	70.00	SH	

Spring 2022

LAW

LAW	638	Federal Courts (Struve)	(4.00)	SH	NR
LAW	802	Law Review - Senior Editor	(0.00)	SH	NR
LAW	803	Littleton Fellows (Pierce)	(3.00)	SH	NR
LAW	821	Externship: Senior Law Center	(4.00)	SH	NR
		Term Statistics:	0.00	SH	
		Cumulative:	70.00	SH	

******* COMMENTS *******

In response to the COVID-19 pandemic, specific divisions within the University of Pennsylvania granted alternate grading options for academic terms that were impacted. See COVID-19 Alternate Grading Policies in the Archives of University Catalogs for details.

Senior Writing Requirement - fulfilled through Independent Study (Ossei-Owusu); Public Service Requirement Satisfied;

DEAN'S PRIZE, awarded to the students attaining the highest grade point averages for the work of the first year;

******* NO ENTRIES BEYOND THIS POINT *******

Ava Barzegar

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AT THE UNDERGRADUATE LEVEL

***** ACADEMIC PROGRAM *****

Admitted From: SOMERVILLE H S

School: ARTS & SCIENCES
Division: COLLEGE OF ARTS & SCIENCES
Degree Program: BACHELOR OF ARTS
Major: POLITICAL SCIENCE
Minor: FRENCH AND FRANCOPHONE STUDIES
Second Minor: MODERN MIDDLE EASTERN STUDIES

***** DEGREES AWARDED *****

05-20-19 BACHELOR OF ARTS
SUMMA CUM LAUDE
WITH DISTINCTION IN POLITICAL SCIENCE

***** HONORS *****

Dean's List 2015-16 2016-17 2017-18 2018-19; PHI BETA KAPPA

***** UNIVERSITY OF PENNSYLVANIA COURSE WORK *****

Fall 2015	COLLEGE OF ARTS & SCIENCES				
FREN 130	INTERMEDIATE FRENCH I	1.00	CU	A	
MATH 170	IDEAS IN MATHEMATICS	1.00	CU	A	
PSCI 130	INTRO TO AMER POLITICS	1.00	CU	A	
STAT 111	INTRODUCTORY STATISTICS	1.00	CU	A+	
	(Quantitative Data Analysis Course)				
	Term Statistics:	4.00	CU	GPA 4.00	
	Cumulative:	4.00	CU	GPA 4.00	
Spring 2016	COLLEGE OF ARTS & SCIENCES				
ECON 001	INTRO ECON MICRO	1.00	CU	A-	
FREN 140	INTERMEDIATE FRENCH II	1.00	CU	A	
PSCI 183	AMERICAN POLIT THOUGHT	1.00	CU	A	
WRIT 073	WRITING SEMINAR IN PHIL:				
	EVOLUTIONARY PSYCHOLOGY	1.00	CU	A	
	Term Statistics:	4.00	CU	GPA 3.93	
	Cumulative:	8.00	CU	GPA 3.96	
Fall 2016	COLLEGE OF ARTS & SCIENCES				
FREN 202	ADVANCED FRENCH	1.00	CU	A	
GEOL 103	NAT DISTURB & DISASTERS	1.00	CU	A+	
	(Quantitative Data Analysis Course)				
GSWS 103	SEX & HUMAN NATURE	1.00	CU	A-	
PERS 017	PERSIAN HERITAGE SPKRS I:				
	READING AND WRITING	1.00	CU	A	
PSCI 150	INTRO TO INTL RELATIONS	1.00	CU	A	
	Term Statistics:	5.00	CU	GPA 3.94	
	Cumulative:	13.00	CU	GPA 3.95	
Spring 2017	COLLEGE OF ARTS & SCIENCES				
CIMS 206	ITALIAN HIST ON SCREEN	1.00	CU	A-	
FREN 214	ADV. COMP & CONVERSATION	1.00	CU	A-	
HCMG 202	ECON & FINCING-HLTHCR DL	1.00	CU	A-	
PSCI 181	MODERN POLITICAL THOUGHT	1.00	CU	A	
	Term Statistics:	4.00	CU	GPA 3.78	

			Cumulative:	17.00	CU	GPA 3.91
Fall 2017						
		COLLEGE OF ARTS & SCIENCES				
AFRC	269	CONSTITUTIONAL LAW	1.00	CU	B+	
COLL	098	College Humanities Internship				
			1.00	CU	P	
FREN	226	FREN HIST/CLTR TIL 1789	1.00	CU	A	
FREN	228	CONTEMPORARY FRANCE	1.00	CU	A	
MUSC	007	ARAB ENSEMBLE	0.50	CU	A	
PSCI	116	POL CHG IN 3RD WRLD	1.00	CU	B+	
		Term Statistics:	5.50	CU	GPA 3.69	
		Cumulative:	22.50	CU	GPA 3.87	
Spring 2018						
		COLLEGE OF ARTS & SCIENCES				
FREN	227	FREN HIST/CLTR 1789-1945	1.00	CU	A	
FREN	233	Francophone Literature and Film				
			1.00	CU	A	
LGST	218	DIVERSITY & THE LAW	1.00	CU	A	
MUSC	007	ARABIC CHOIR	0.50	CU	A	
PSCI	338	STATISTICAL METHODS PSCI	1.00	CU	A	
		(Quantitative Data Analysis Course)				
		Term Statistics:	4.50	CU	GPA 4.00	
		Cumulative:	27.00	CU	GPA 3.89	
Fall 2018						
		COLLEGE OF ARTS & SCIENCES				
MUSC	007	ARABIC CHOIR	0.50	CU	A	
NELC	218	MEDIA&CULTR CONTMPR IRAN	1.00	CU	A	
PSCI	280	FEMINIST POL. THOUGHT	1.00	CU	A	
PSCI	328	DEMOCRACY IN TROUBLE: OAS TO THE				
		RESCUE?	1.00	CU	A+	
PSCI	497	POLITICAL SCIENCE HONORS	1.00	CU	A	
		Term Statistics:	4.50	CU	GPA 4.00	
		Cumulative:	31.50	CU	GPA 3.90	
Spring 2019						
		COLLEGE OF ARTS & SCIENCES				
NELC	281	ANTH & THE MODERN WORLD:				
		AFGHANISTAN, IRAN, AND PAKISTAN				
			1.00	CU	A	
PSCI	499	INDEPENDENT STUDY: "PARTISANSHIP				
		AND POLITICAL REFUGEES	1.00	CU	A	
		Term Statistics:	2.00	CU	GPA 4.00	
		Cumulative:	33.50	CU	GPA 3.91	
* * * * * NO ENTRIES BEYOND THIS POINT * * * * *						

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 18, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Clerkship Applicant Ava Barzegar

Dear Judge Liman:

Ava Barzegar is applying for a clerkship in your chambers. I write with great enthusiasm to recommend her. Ava was an excellent student in my first-year Contracts class – very smart, fully prepared, and respected by her peers. I think she would excel as a law clerk.

Ava was one of forty students in my Contracts class in the fall of 2019. I teach the course relying on a mix of short lectures, “cold-calling” on students, and back-and-forth exchanges with students who volunteer comments in response to questions that I pose to the class. From the very beginning of the course, Ava was notable for her diligent preparation, strong intellect, and curiosity. She volunteered comments only rarely, but they were always thoughtful ones. On call, she was very good. I called on her three times over the semester – once to discuss canons of contract interpretation, once to give her a series of hypotheticals about damages, and once to discuss a case grounded in the law of restitution. Each time, she delivered excellent answers, allowing me to go deeper and deeper in the subject matter. She similarly impressed me during office hours, which she came to occasionally to ask hard questions that got to the heart of what we were covering in class. In conversation, she is quick on her feet, with a dry sense of humor and a poised manner.

Based on my impressions of Ava in class, I expected her to do well on my final exam – and she did. I give a tough closed-book exam that requires students to spot issues, analyze issues, and reflect on broader policy implications. Ava’s exam was excellent and earned her an “A,” which is a grade that goes only to the top 15% of exams in each 1L course.

Ava’s performance in my class is consistent with her other, impressive credentials. She received her undergraduate degree from the University of Pennsylvania summa cum laude. Although she came straight from her undergraduate degree, she had already accumulated a set of eclectic and interesting experiences through her summer jobs (including working for a member of Congress), her role as an undergraduate research assistant, and her interests in languages. At Penn Carey Law, she has earned stellar grades across the board, putting her high in the class. She has also spent considerable pro bono time working on the law school’s international refugee project. Ava has told me that this is especially important to her as the daughter of two immigrants from Iran. As a 3L, she will be a Littleton Fellow responsible for helping to teach legal research and writing to 1Ls – a position for which students are selected based on their talents in research, writing, and professionalism.

In short, Ava is exactly the kind of person who would make an excellent law clerk. I strongly recommend her to you. I would be delighted to talk more about Ava if you have questions. I can be reached by phone at (215) 746-7824 and my email is jgalbraith@law.upenn.edu.

Sincerely,

Jean Galbraith
Professor of Law
jgalbraith@law.upenn.edu
215-746-7824

Jean Galbraith - jgalbraith@law.upenn.edu - 215-746-7824

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 18, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Clerkship Applicant Ava Barzegar

Dear Judge Liman:

I am writing to express my support for Ava Barzegar's application to your chambers. I am an Assistant Professor of Law at the University of Pennsylvania Carey Law School. Ava enrolled in my 1L Criminal Law course in the Spring 2020 semester. I also supervised her student note for the University of Pennsylvania Law Review in the Spring 2021 semester. In the past year and a half that I've gotten to know Ava, I've found her to be one of the most high-performing, detailed, and intellectually engaged students in her class. My experiences with her the past eighteen months make me confident that Ava would be an excellent choice for a judicial clerkship position.

At the outset, it is worth noting that Ava's academic record is impressive and leaves me with no doubts about her ability to handle the intellectual requirements of clerkship. She graduated summa cum laude as an undergraduate student at the University of Pennsylvania and continued her high-level academic performance in law school. Her grades speak for themselves. Last year, she was awarded the Dean's Prize, which is given to students with the highest grades during the 1L year. She also served as a Littleton Fellow this year, a highly coveted position involving mentoring of first-year students in Penn's legal writing curriculum. This background, along with her position as an Associate Editor on the University of Pennsylvania Law Review, show how Ava has the intellectual acumen and legal writing skills that are important qualities for clerks.

As a student in my Criminal Law course, Ava stood out as one of the most thoughtful students inside and outside the class. A few things can be said on this front. First, my dialogues with her in class were always productive. When she was cold-called she was always prepared, and she always asked instructive questions that helped advance the class discussion. Second, and relatedly, her level of detail is noteworthy. She came to office hours the most in the course and did so not for facetime, but to ensure that she was understanding the material correctly and getting questions of law right. (More on this below). Her thoughtfulness and penchant for details were reflected on her exam. Although Penn Law graded on a pass/fail basis for the Spring 2020 semester because of COVID-19 and the switch to remote learning, Ava's final exam was well-written and demonstrated a facility the fundamentals of criminal law as well as larger social policy concerns that animate criminal justice administration. She was a pleasure to teach, and I anticipate that her carefulness, coupled with her willingness to learn, would make her a great clerk and attorney.

Ava made such a positive impression on me that I agreed to supervise her student note this past spring during a heavy teaching semester where I taught two 1L courses. I had a sense that she would come prepared, be a good listener, and be intellectually engaged. My intuition was correct, and it made supervising her project a pleasant experience. Ava's note was about catcalling—unwanted comments addressed primarily at women in public spaces. The paper explores the trivialization of this type of gender harm, surveys the limitations of existing legal avenues available to catcalling victims, and suggests some ways our legal system might better regulate this behavior. We went through multiple drafts of the essay, and a few interrelated things stood out during my work with her. First, Ava is intellectually creative. Her project was able to interestingly meld current conversations about gender-based harm with tort law and scholarship. While her note was initially wider in scope, I encouraged her to scale some parts back, which she was able to do while still retaining the essence of the project. This leads me to my second point: Ava is great at receiving and implementing feedback. Both are tasks that law students and young attorneys struggle with for various reasons (e.g., because they are used to being "right," suboptimal listening skills, emotional disposition). This was not a problem for Ava. In each session we met and every draft I read, I saw the fruits of the feedback I gave Ava and her implementation. Finally, Ava is determined to getting questions of law correct. Her project required familiarizing herself with literatures and legal concepts that she did not cover in her courses in law school, namely First Amendment law, sexual harassment under Title VII of the Civil Rights Act of 1964, and remedies. After pointing her in these directions, I was encouraged to see how she developed a sufficient understanding of these areas of law over the semester. Overall, her intellectual deftness, ability to implement feedback, and insistence on getting the law right strike me as traits that make her a competitive clerkship candidate.

I'd be delighted to chat further about my experience with Ava and why she would be a great selection for your chambers. I can be reached via electronic mail at oss@law.upenn.edu and by telephone at (347) 985-4003.

Sincerely,

Shaun Ossei-Owusu

Shaun Ossei-Owusu - oss@law.upenn.edu - 215-898-5071

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 18, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Clerkship Applicant Ava Barzegar

Dear Judge Liman:

It gives me great pleasure to recommend Ava Barzegar for a clerkship in your chambers. I first met Ava in the fall of 2019, when she was assigned to my year-long, first-year Legal Practice Skills class at the University of Pennsylvania Carey Law School.

From day one of my course, Ava was not only one of my most engaged and promising law students—but a leader among her peers. My course has several major assignments throughout the year—drafting a legal analysis, conducting a mock transaction in teams and negotiating against other students, drafting a litigation brief and arguing it with a partner before a mock court, and other smaller assignments where students must work together to problem solve. Ava excelled and stood out among her peers in each assignment.

Ava's excellent legal research and writing skills were apparent from her first assignment in my course and have only improved from there. Ava was—without question—one of the top legal writers in my first-year course. Ava also received Honors in my Legal Practice Skills course. Awarding Ava an Honors designation for my course was an easy decision.

Throughout her first-year legal research and writing assignments, Ava's legal research was thorough and detailed. No relevant case was missed, but Ava did not get bogged down in irrelevant legal arguments or inapplicable precedent. Ava is clearly intelligent and analytical—but she is also able to convey complex legal analyses through clear, simple, and well-organized legal writing. While this is a measure that many law students—and lawyers—strive for, Ava was a standout in her ability to surpass even my highest expectations for my students.

After her first year of law school, I have continued to interact with and observe Ava. She is a leader at Penn Law and an active and engaged member of our legal community. Ava is respectful of and respected by her peers. In addition to developing technical legal and analytical skills, Ava shone when working with others. She is a natural leader—listening to others and treating them with respect, while offering suggestions and solutions and taking command to move the project forward. Ava will continue her commitment to legal writing and mentorship by serving as Littleton Fellow in the Legal Practice Skills program during her 3L year—and as director of that program, I couldn't be happier to have Ava as a critical part of the education of our incoming first-year students.

In sum, Ava would make an excellent judicial clerk and I recommend her wholeheartedly. Please let me know if you have any questions or would like any additional information from me.

Sincerely,
Sarah E. Pierce
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Ava Barzegar

42 S. 15th Street, Apartment 1709, Philadelphia, PA 19102
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Writing Sample

I drafted the attached writing sample as an assignment in my Federal Prosecution in Practice course during the Spring 2021 semester. The assignment required drafting a motion for pretrial detention analyzing from the Government's point of view the reasons why the defendant should be detained prior to trial. The facts are derived from several sources, including a proffer from a government cooperator as well as the defendant's Complaint and Warrant. I conducted all of the research necessary for the assignment and received general feedback from my professor.

I have removed the cited exhibit, proposed pretrial detention order and certificate of service for brevity.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
v.	:	No. 19-652-M-1
HENRY MARTIN	:	

GOVERNMENT'S MOTION FOR PRETRIAL DETENTION

Defendant Henry Martin is charged with participating as a high-level actor in a national drug distribution scheme. In a prolonged conspiracy to distribute cocaine, Martin shipped packages containing cocaine from Puerto Rico and conspired with a United States postal carrier to clandestinely deliver those packages to Martin in the mainland US. On May 16, 2019, Martin was arrested for possession of ten parcels containing 5.5 kilograms of cocaine. Per Title 18, United States Code, Section 3142(e)(3)(a), Martin is subject to a rebuttable presumption that no combination of conditions will reasonably assure his appearance as required and the safety of the community because there is probable cause to find that he committed an offense under the Controlled Substances Act with a maximum term of imprisonment greater than ten years. For the reasons set forth below, the Government respectfully requests the court to grant its motion for pretrial detention for Martin, pursuant to Title 18, United States Code, Section 3142(e).

I. FACTS

In support of this motion, the government makes the following representations and proposed findings of fact:

A. Probable Cause and the Evidence in this Case

There is probable cause to believe that the defendant has violated Title 18, United States Code, Section 201(b)(1), Title 18, United States Code, Section 371, and Title 21 United States

Code, Section 846, as charged in the indictment filed on February 5, 2021. Per Title 18, United States Code, Section 3142(e)(3)(A), the defendant is subject to a rebuttable presumption that no condition or combination of conditions will be sufficient to assure the appearance of the defendant as required or the safety of the community.

The evidence here strongly suggests that Henry Martin is a high-level participant in a national drug trafficking conspiracy. Martin shipped large USPS Priority Mail parcels containing cocaine from Puerto Rico to the mainland United States, with the assistance of mail carrier Lee Gordon. (Gordon Mem. of Interview, May 28, 2019 (“MOI”) 2). In this elaborate scheme, Gordon provided Martin with the addresses of residences along his mail route. (MOI 2). Martin, in turn, shipped packages from Puerto Rico to the mainland United States, listing the addresses provided by Gordon as the recipients. (MOI 2). Upon arrival to the Post Office in Bristol, PA, Gordon diverted the packages from Puerto Rico and met Martin separately to deliver them. (MOI 2). Gordon received \$150 to \$200 cash compensation per package diverted, and estimated that he received \$15,000 to \$20,000 in total. (MOI 3). Martin initially gave Gordon an iPhone for communication and contacted Gordon through two different phone numbers. (MOI 2).

The Government has corroborated this evidence with legally obtained surveillance, court-approved search warrants, and information obtained at Henry Martin’s arrest on May 16, 2019. On March 9, 2019, surveillance installed in a USPS postal truck showed that Gordon handed a parcel to a male driver of a black car and was given what appeared to be cash. (Martin Compl. 5). On May 16, 2019, Martin was arrested with ten large USPS Priority Mail parcels in his trunk, containing a total of 5.5 kilograms of cocaine. (Assignment Mem. (“AM”) 2; Exhibit 1). The USPS flagged one of these packages when it learned that Henry Martin handed a Priority Mail parcel to a mail clerk in a Puerto Rico post office at about the same time as the package was

scanned as received. (Martin Compl. 5-6). A drug detection canine and search warrant confirmed that the package contained 1000 grams of cocaine. (Martin Compl. 6-7). Authorities then equipped this package with a tracking device and found it in Martin's car upon his arrest. (Martin Compl. 7-8). Gordon has also corroborated that the previous packages shipped by Martin contained cocaine. Not only did Martin confirm to Gordon that the packages contained cocaine, but Gordon was also, on occasion, given the cocaine to sell in exchange for a commission. (MOI 2-3). Furthermore, when packages arrived on days Gordon was not working, they were delivered to the recipients listed. (MOI 3). Martin directed Gordon to retrieve the packages from the residences; but on at least one occasion, a resident opened the package before returning it to Gordon, and Gordon saw the cocaine contents. (MOI 3).

The evidence suggests that Martin has been engaged in this prolific conspiracy to distribute cocaine since at least 2017. Gordon stated that he has been working with Martin since 2017 and that Martin had previously worked with another postal carrier who had since retired. (AM 2; MOI 3). Moreover, in addition to bribing a United States postal worker, Martin also worked with a UPS mail carrier. (MOI 3). Cooperator A believes that Martin is part of a larger ring of drug traffickers spanning several states and Puerto Rico, while Gordon explained that Martin stated that he had sold cocaine in Pennsylvania, Maine and Maryland. (AM 2; MOI 2).

The government also has reason to believe that Martin may be engaged in the distribution of other substances and products. For instance, Martin stated to Gordon that he previously sold heroin, and offered Gordon a commission if he found anyone who sold pills because Martin planned to resell them. (MOI 4). Upon a request from a client, Gordon asked Martin if he sold guns, and Martin suggested that he was open to selling guns by showing Gordon photos of the guns he possesses. (MOI 4).

B. Statutory Maximum Penalties for Charges Filed

Defendant Martin has been charged with attempted possession with intent to distribute cocaine under 21 U.S.C. § 846, which subjects a person who attempts or conspires to commit any offense in the subchapter with the same penalties as those prescribed for the offense. 21 U.S.C. § 846. Thus, given Martin's lack of criminal record and the 5.5 kilograms of cocaine seized in his arrest on May 16, 2019, Martin is subject to penalty under 21 U.S.C. § 841(b)(1)(A)(ii)(II), which states that any person who knowingly or intentionally possesses at least five kilograms or more of cocaine "shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life." This penalty increases if death or serious bodily injury results from the use of such substance. 21 U.S.C. § 841(b). Henry Martin has also been charged with conspiracy to bribe a public official under 18 U.S.C. 371 and bribery of a public official under 18 U.S.C. 201(b)(1), punishable by a maximum of five years and fifteen years term of imprisonment respectively.

C. Other Factors Warranting Detention**a. Personal Characteristics**

Martin is married with minor children living in Philadelphia, but has no other family in the Philadelphia area. (Pretrial Services Intake Report ("PSIR")). His parents, siblings and extended family all live in Puerto Rico. (PSIR). Martin travels frequently both domestically and internationally: in the past six months, Martin has traveled to Puerto Rico six times, often with large sums of cash ranging from \$40,000 to \$50,000. (PSIR; MOI 2). The last two times he traveled to Mexico, Martin arrived through Puerto Rico. (PSIR). Martin is self-employed, owning several small convenience stores. (PSIR). However, Gordon suggests that Martin sells cocaine from his bodega behind the deli where the security cameras do not cover. (MOI 4).

b. Family Involvement

When delivering packages containing cocaine, Gordon not only interacted with Henry Martin, but also delivered parcels to Martin's wife and brother in-law. (MOI 2-4). Martin's wife would leave Gordon's cash payment in the trunk. (MOI 4). Martin's brother in-law has allegedly also traveled to Puerto Rico and California to mail parcels as part of the conspiracy. (MOI 2).

II. LEGAL ANALYSIS

Martin should be detained pretrial because his conspiracy to distribute cocaine poses a serious danger to the community and his frequent travel to Puerto Rico suggests that he is a serious flight risk which cannot be assured by court-imposed conditions. Under the Bail Reform Act, 18 U.S.C. § 3142 et seq., a judicial officer may issue an order detaining particularly dangerous defendants pending trial when "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(a), (e)(3)(A). Pretrial detention may only be ordered after a hearing pursuant to subsection (f), where the rules concerning admissibility of evidence do not apply. Id. § 3142(f); United States v. Delker, 757 F.2d 1390, 1393 (3d Cir. 1985). Upon Government motion for a continuance, the pretrial detention hearing may not take place more than three days, excluding weekends and legal holidays, after the defendant is first presented before the judicial officer. Id. § 3142(f). Thus, because Martin was first presented to the magistrate on Friday, February 12, 2021, and Monday, February 15, was a legal holiday, a pretrial detention hearing on Wednesday, February 17, 2021, is timely.

A pretrial detention hearing may be considered in cases involving a crime punishable by life imprisonment or death, a federal narcotics offense with a maximum sentence of at least ten years, and a serious risk of flight, among other cases. Id. § 3142(f)(1), (f)(2); United States v.

Himler, 797 F.2d 156, 159 (3d Cir. 1986). Here, Martin can be considered for pretrial detention because his case involves a crime punishable by life in prison and a federal narcotics offense with a minimum ten-year sentence, and because Martin poses a serious risk of flight. 18 U.S.C. § 3142(f)(1)(B), (f)(1)(C), (f)(2)(A). Furthermore, where there is probable cause to believe that a defendant committed a federal narcotics offense with a maximum term of at least ten years, there is a rebuttable presumption that no “combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” Id. § 3142(e)(3)(A). The government can establish probable cause by indictment, which then shifts the burden to the defendant to produce evidence that he is neither a flight risk nor a danger to the community. United States v. Suppa, 799 F.2d 115, 119 (3d Cir. 1986); United States v. Johnson, No. 20-272-2, LEXIS 200291, at *9 (E.D. Pa. Oct. 28, 2020). Thus, Martin is subject to a rebuttable presumption because he has been indicted with a narcotics offense with a maximum possible life sentence.

To overcome the rebuttable presumption, “[t]he defendant must produce some credible evidence forming a basis for his contention that he will appear and will not pose a threat to the community.” United States v. Carbone, 793 F.2d 559, 560 (3d Cir. 1986). In determining whether a defendant has rebutted the presumption, the court considers the following factors on a case-by-case basis: (1) the nature and seriousness of the offense charged, (2) the weight of the evidence, (3) the history and characteristics of the person, and (4) the nature and seriousness of the danger to any person or to the community. 18 U.S.C. § 3142(g); Delker, 757 F.2d at 1399. If the defendant overcomes the statutory presumption, the government bears the ultimate burden of persuasion that the defendant is a danger to the community by clear and convincing evidence, or that the defendant poses a flight risk by a preponderance of the evidence. 18 U.S.C. § 3142(f);

United States v. Perry, 788 F.2d 100, 115 (3d Cir. 1986); Himler, 797 F.2d at 161. Here, the court should detain Martin prior to trial not only because he poses a danger to the community but also because he poses a serious risk of flight.

A. Martin Should Be Detained Because His Drug Trafficking Offense Poses a Serious Danger to the Community.

Martin poses a danger to the community because he was charged with conspiracy to distribute over five kilograms of cocaine. Although the Bail Reform Act details certain factors in analyzing whether a defendant should be detained pretrial, some factors, such as ties to the community, are less important when other factors clearly and convincingly establish that the defendant poses a danger to the community. 18 U.S.C. § 3142(g); Delker, 757 F.2d at 1401. In Delker, for instance, the court recognized that the defendant had strong ties to the community, but held that the weight of the evidence indicating that the defendant threatened potential witnesses and the seriousness of the defendant's crime of violence outweighed these community ties. Id.; see also United States v. Garcia, No. 07-CR-00529, WL 2825724, at *3-4 (E.D. Pa. Sept. 20, 2007) (holding that although the defendant had strong community ties and no prior criminal record, the large quantity of drugs found at the defendant's home strongly weighed in favor of pretrial detention). But see Carbone, 793 F.2d at 561 (holding that the defendant successfully rebutted the § 3142(f)(1)(C) presumption that he was a danger and a flight risk because he had an offer of steady employment pending trial, he would be confined to his parents' home from 8:00pm to 6:00am as a condition of release, and because the one million dollars in property posted by his friends as surety was a positive representation of his character).

When considering the danger to any person or to the community, drug distribution, especially in combination with gun possession, poses a serious danger. United States v. Strong,

775 F.2d 504, 507 (3d Cir. 1985); United States v. Frazer, No. 19-110, 2020 WL 2404893, at *4 (E.D. Pa. May 11, 2020). In Frazer, for example, the court held that the defendant’s danger to the community because of his involvement in drug trafficking was exacerbated by his gun possession. Frazer, No. 19-110, 2020 WL 2404893, at *4. See also United States v. Sterling, 459 F. Supp. 673, 679 (E.D. Pa. 2020) (noting that the defendant’s gun possession and drug use outweighed his lack of prior convictions and letters in support of his character). The Bail Reform Act’s legislative history also indicates that Congress viewed drug crimes as serious and “intended to equate drug trafficking with danger to the community” because people charged with drug trafficking are “often in the business of importing or distributing dangerous drugs, and thus, because of the nature of [this] criminal activity ... pose a significant risk of pretrial recidivism.” Strong, 775 F.2d at 507, citing S. Rep. No. 225, 98 Cong., 2d Sess. 12-13, 20.

In considering the danger to the community, the court also considers the likelihood that the defendant, upon release, will commit an offense with which he was charged and the likelihood that any conditions imposed will be effective to prevent the defendant from doing so. Johnson, No. 20-272-2, LEXIS 200291, at *15; United States v. Merlino, No. 99-363-01, 1999 U.S. Dist. LEXIS 19114, at *11-12 (E.D. Pa. Dec. 15, 1999). In Johnson, for example, although the defendant had no prior violent crime convictions, had ties to the community, and proposed living with his sister as a condition of release, the court held that there was no reasonable assurance that the drug dealing would cease because he had concealed his drug trafficking offenses from his family in the past and there was “no reason to believe he [would] not do it again while living with [his sister].” Johnson, No. 20-272-2, LEXIS 200291, at *17-20. See also United States v. Vargas, No. 90-240-01, 1990 U.S. Dist. LEXIS 8119, at *6-7 (E.D. Pa. June, 19, 1990) (holding that the defendant’s employment during the day and confinement by electronic

monitoring “does not rule out his ability to continue distributing cocaine,” because drugs can be sold from homes as well as streets). The court in Merlino similarly ruled that no combination of conditions would guarantee the defendant would refrain from drug trafficking because house arrest does not prevent the defendant from “communicating with visitors to his home and conducting criminal activity over cell phones which cannot be effectively monitored by the Government.” Merlino, No. 99-363-01, 1999 U.S. Dist. LEXIS 19114, at *11-12.

Here, the charge against Martin suggests that he poses a serious danger to the community. Martin is alleged to have conspired to distribute over five kilograms of cocaine, which Congress intended to be considered serious, as the court noted in Strong. Moreover, the weight of the evidence is substantial: the Government tracked a package containing cocaine from the time it was shipped from Puerto Rico by Martin to the time Gordon delivered it to Martin in Pennsylvania. (Martin Compl. 5-8). Surveillance, a co-conspirator, and a cooperator have corroborated these allegations that Martin is part of a large drug trafficking ring. (Martin Compl. 5; MOI 2-3; AM 2). Analyzing Martin’s history, like in Garcia, where the court held that the defendant’s drug crimes weighed in favor of detention despite the defendant’s lack of criminal record, here Martin should be detained despite his lack of criminal record because the evidence suggests that he is a high-level national drug trafficker and potentially distributes illicit guns, pills, and heroin. (PSIR; MOI 4). While Martin may assert that he has stable employment like the defendant in Carbone, there is reason to believe that his convenience stores are entangled in the conspiracy, as Martin sold drugs from his bodega. (PSIR; MOI 2). Finally, Martin may assert that he has strong family ties and ties to the community similarly to the defendants in Carbone and Garcia, but this factor does not weigh in favor of pretrial release because Martin’s wife and brother in-law are also involved in this conspiracy. (PSIR; MOI 2).

Finally, Martin's drug trafficking poses a grave threat to the community and conditions will not assure the community's safety because Martin will still have the capacity to continue to distribute cocaine. As in Strong, where the court noted that drug traffickers pose a danger to the community upon release due to high rates of recidivism, it is likely that Martin will continue to distribute cocaine upon release, posing a danger to the community. Moreover, like in Frazer, where the court held that the defendant's gun possession in combination with his drug trafficking charge was a strong indicator that the defendant poses a danger to the community, here Martin poses a danger because he possesses guns in addition to distributing cocaine. (MOI 4). Finally, like in Merlino, where the court held that house arrest and monitoring cell phones was insufficient to assure the safety of the community because the defendant could still have visitors to his house, here it is unlikely that there are conditions which will assure the safety of the community. Rather, Martin's use of multiple cell phones and phone numbers would make it very difficult for the Government to monitor his criminal activity, and Martin could evade conditions by directing his wife and brother in-law to continue drug trafficking on his behalf. (MOI 2).

B. Martin Should Be Detained Because His Financial Resources and Family in Puerto Rico Suggest There Is a Risk that He May Flee Following Pretrial Release.

Martin should be detained pretrial because his previous travel history, financial resources, and family in Puerto Rico indicate that he poses a risk of flight if released. Because "[m]ere opportunity for flight is not sufficient grounds for pretrial detention," Himler, 797 F.2d at 162, the court balances personal history with the seriousness of the crime, weight of the evidence, and danger to the community to determine whether a defendant has rebutted the risk of flight presumption. 18 U.S.C. § 3142(g). In addition to criteria specified in § 3142(g), the court focuses on access to resources such as false identification and travel history. Mitan, No. 08-760-1, 2009

WL 604695, at *8-13 (E.D. Pa. Mar. 6, 2009). In Mitan, for instance, the court held that the defendant posed a serious flight risk because he had multiple passports, had no permanent address, and travelled extensively domestically and internationally. Id. The length of the defendant's possible sentence can also indicate flight risk. Merlino, No. 99-363-01, 1999 U.S. Dist. LEXIS 19114, at *9. Merlino held that although the defendant had previously served three- and four-year sentences, the potential twenty-year sentence negated the defendant's previous record of self-surrendering. Id.; see also United States v. Rodgers, 738 F. Supp 156, 158 (E.D. Pa. 1990) (holding that the defendant had "every incentive to flee" because he could be sentenced to life). Imposing house arrest and ankle bracelet monitoring may also be ineffective to assure appearance at trial because ankle bracelet monitoring "does not prevent flight—it only informs the Government that the bracelet's wearer is no longer in the area." Merlino, No. 99-363-01, 1999 U.S. Dist. LEXIS 19114, at *11-12.

Here, Martin poses a risk of flight because he has strong family ties in Puerto Rico and could be sentenced to life in prison. Analyzing the § 3142(g) factors, it is clear that the offense charged is a serious drug crime and that the weight of the evidence is strong. As discussed above, Martin may pose danger to the community if released because he may resume drug trafficking. Analyzing Martin's personal characteristics, Martin has no criminal history and is married with several minor children living in Philadelphia, but his extended family all live in Puerto Rico, where Martin has visited six times in the past six months. (PSIR). Similarly, as in Mitan, where the court held that the defendant was a flight risk in part because of his travel history, Martin travels frequently to other countries, such as Mexico, through Puerto Rico. (PSIR). Although Martin may assert that he is gainfully employed, this employment is linked to drug trafficking because he sells cocaine from his stores. (PSIR; MOI 4). Martin also has substantial cash

resources to flee: during past trips to Puerto Rico, he has brought \$40,000 to \$50,000 with him. (MOI 2). Finally, as in Rodgers, where the court held that a potential life sentence itself is an incentive to flee, here, Martin's potential life sentence offers incentivizes flight. Yet, as in Merlino, house arrest and ankle monitoring are ineffective measures to prevent flight.

III. CONCLUSION

When all these factors are viewed in light of the substantial sentence Martin faces if convicted, it is clear that no condition or combination of conditions will reasonably assure Martin's presence as required and the safety of the community. Even if Martin rebuts the statutory presumption with sufficient evidence that he does not pose a flight risk or a danger to the community, the court should detain Martin pretrial because the Government proved that Martin is a danger to the community by clear and convincing evidence because of the strong weight of evidence of Martin's drug distribution offense. The court should also rule in favor of pretrial detention because the Government proved that Martin poses a flight risk beyond a preponderance of the evidence because Martin has significant cash resources, family in Puerto Rico, and a strong incentive to flee a possible life sentence.

WHEREFORE, the government respectfully submits that its Motion for Defendant's Pretrial Detention should be granted.

Respectfully submitted,

JOAN WILLIAMS
Acting United States Attorney

AVA BARZEGAR
Assistant United States Attorney

- 12 -

Applicant Details

First Name **Zachary**
 Last Name **Bass**
 Citizenship Status **U. S. Citizen**
 Email Address zbass@winston.com
 Address

Address

Street
132 East 45th Street, 6B
 City
New York
 State/Territory
New York
 Zip
10017
 Country
United States

Contact Phone Number **3868827658**

Applicant Education

BA/BS From **University of Illinois-Urbana-Champaign**
 Date of BA/BS **August 2015**
 JD/LLB From **New York University School of Law**
<https://www.law.nyu.edu>
 Date of JD/LLB **May 20, 2021**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **NYU Journal of Intellectual Property & Entertainment Law**
 Moot Court Experience **Yes**
 Moot Court Name(s) **2021 Marden Moot Court Competition**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/
Externships **Yes**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Specialized Work **Appellate, Immigration, Patent, Prison**
Experience **Litigation, Pro Se**

Recommenders

Fromer, Jeanne
jeanne.fromer@nyu.edu
(212) 998-6129

Padmanabhan, Krishnan
KPadmanabhan@winston.com
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Strandburg, Katherine
strandburg@exchange.law.nyu.edu
312-362-8701

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**



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ZACHARY J. BASS

Associate Attorney
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April 11, 2022

The Honorable Lewis J. Liman
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: Southern District of New York Term Clerkship

Dear Judge Liman:

My name is Zachary Bass and I am an associate litigation attorney with Winston & Strawn LLP. I write to express my profound interest in serving as your term clerk in 2024 (or any subsequent term). This interest largely stems from your active intellectual property docket and my admiration for your past civil rights advocacy. As a former theme park ride attraction designer, first generation college graduate and lawyer, and current intellectual property and civil rights attorney, I believe that my personal and professional background would serve you and the Southern District well.

Since starting at Winston, I have assisted Krishnan Padmanabhan – Partner and Co-Chair of our Technology, Media, and Telecom Group – in the patent defense of Cisco Systems, Hewlett Packard, Microsoft, and Atlantic Broadband in cases involving wireless technologies and content distribution systems. I also assisted the firm in its defense of Cox Communications during its appeal of one of the largest copyright verdicts in the history of the United States. My pro bono practice is extensive. Currently, I represent thousands of pre-trial detainees – imprisoned at Rikers Island – alleging violations under the New York Constitution against NYC and New York regarding the facility's repugnant conditions.

Before my legal career, I worked as a theme park attraction designer. I helped with Disney's *Star Wars Galaxy's Edge: Rise of the Resistance*. I then graduated from NYU School of Law, where I served as Editor-in-Chief of the *NYU Journal of Intellectual Property & Entertainment Law*. My note, *Locast and the Legislative History of 17 U.S.C. § 111(a)(5)*, was relied upon by multiple plaintiff firms in the case of *ABC, et al. v. Goodfriend* in the Southern District of New York. It was also the recipient of the 2021 Jack J. Katz Memorial Award.

I make myself available for any questions.

Very truly yours,


Zachary J. Bass, Esq.

ZACHARY J. BASS, ESQ.

(386) 882-7658

Zbass@winston.com

Local Address

132 E. 45th St.

New York, NY 10017

BAR AND COURT ADMISSIONS

- New York State
- Southern District of New York
- Eastern District of New York (pending)
- Northern District of Florida

EXPERIENCE

WINSTON & STRAWN LLP, New York, NY

Associate Attorney – October 2021 – Present

- Co-drafted *Markman* hearing slides and invalidity contentions for the patent defense of Cisco Systems, Hewlett Packard, and Aruba Networks in the Eastern District of Texas. Secured a favorable settlement on behalf of clients.
- Co-authored the amended complaint, on behalf of Rémy Cointreau and Cointreau U.S.A., in a trademark suit against one of the most valuable cannabis companies in the world in the Southern District of New York.
- Assisted in the drafting of a Rule 60(b) motion in the defense of Cox Communications against Sony Music Entertainment in the Eastern District of Virginia.
- Authored complaint, on behalf of Atlantic Broadband, in a patent dispute in the District of Delaware – leading to the voluntary dismissal of the suit.
- Co-authored the complaint and memorandum of law in an ongoing class action involving thousands of pre-trial detainees at Rikers Island suing the Mayor of New York City, the New York City Department of Correction, and multiple state entities in a lawsuit alleging constitutional violations under the New York State Constitution.

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Research Assistant to Professor Katherine Strandburg, December 2020 – May 2021

- Worked on a National Science Foundation-funded team studying the intersection of intellectual property and knowledge commons communities.
- On behalf of the team, presented our research and findings to 2021 Open User Innovation Conference at RWTH Aachen University.

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Research Assistant to Professor Jeanne Fromer, August 2019 – January 2020

- Researched the legal history of Mickey Mouse for a Disney-produced documentary (pending release on Disney+).

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Memphis, TN

Intern to the Honorable Bernice Donald, May 2019 - August 2019

- Co-authored a recommendation to Judge Donald, reconciling the jurisdictional boundaries between the Bankruptcy Code and the Federal Power Act in the case of *In re: FirstEnergy Solutions Corp* (6th Cir. 2019).
- Drafted decisions on petitions for panel rehearings, rehearings *en banc*, and proposed orders to dispose of appeals and motions. Conducted research and wrote Rule 34(j) bench memoranda.

DOUGHERTY MANUFACTURING, Edgewater, FL

Director, October 2017 - October 2018

- Assisted in the design and manufacturing of several theme park attractions for Disney World and Universal Studios.

- Crafted the marketing strategy for engineering and manufacturing operations.

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

J.D., May 2021

- Honors:
- NYU Journal of Intellectual Property & Entertainment Law*, Editor-in-Chief
 - Engelberg Center on Innovation Law & Policy, Student Fellow
 - 2021 Jack J. Katz Memorial Award
 - 2021 JIPEL Award: Greatest Contribution by a Third-Year Editor
 - 2021 Marden Moot Court Competition – Top 11 (100 competitors)
- Publications:
- Note, *Locast and the Legislative History of 17 U.S.C. § 111(a)(5)*, 10 N.Y.U. J. INTELL. PROP. & ENT. LAW 297 (2021) ([Link](#))
 - Editorial, *The Need for Collective Standards: Validating Raw Data in Legal Empirical Analysis*, 10 N.Y.U. J. OF INTELL. PROP. & ENT. LAW 40 (2020) ([Link](#))

UNIVERSITY OF ILLINOIS AT URBANA CHAMPAIGN, Champaign, IL

B.S. in Hoeft Technology & Management Program and Marketing, with High Honors, May 2015

Senior Thesis: *An Analysis of the Built Landscape of the George W. Bush Presidential Library* (accepted for preservation by the George W. Bush Presidential Library)

- Honors:
- University of Illinois Senior 100 Recipient (approximately 5,000 graduates)
 - Senator of the College of Business (two terms)

COMMUNITY WORK

NEW YORK STATE BAR ASSOCIATION, New York, NY

Member, January 2022 – Present

- Intellectual Property Section, Member.
- Entertainment, arts & Sports Law Section, Member

DAYTONA STATE COLLEGE FOUNDATION, Daytona Beach, FL

Board of Directions, January 2017 – October 2018

- Assisted the school in raising \$150,000 in scholarship funding for single mothers in the Daytona Beach community.

HALIFAX HEALTH, Daytona Beach, FL

Board of Advisors, January 2016 – October 2018

- Advised the CEO on several community-related efforts in order to expand access to public health at the largest public hospital in Central Florida.

THEATRE

Theatre is one of my greatest passions. I have acted in numerous productions. My favorite roles include Pablo Picasso in *Picasso at the Lapin Agile*, Brother Joshua in *The Christians*, and Freddy Eynsford-Hill in *My Fair Lady* (yes, I have sang “On the Street Where You Live” in front of a thousand people).

Name: Zachary J Bass
 Print Date: 03/24/2022
 Student ID: N18128160
 Institution ID: 002785
 Page: 1 of 2



NEW YORK UNIVERSITY

OFFICE OF THE UNIVERSITY REGISTRAR
 School of Law
 FICE School Code: 002785

Fall 2019

Send To: ZACHARY BASS

New York University
 Beginning of School of Law Record

Degrees Awarded

Juris Doctor
 School of Law
 Major: Law
 05/19/2021

Fall 2018

School of Law
 Juris Doctor
 Major: Law
 Lawyering (Year) LAW-LW 10687 2.5 CR
 Instructor: Tal Kastner
 Torts LAW-LW 11275 4.0 B
 Instructor: Eleanor M Fox
 Procedure LAW-LW 11650 5.0 B+
 Instructor: Samuel Issacharoff
 Contracts LAW-LW 11672 4.0 B
 Instructor: Liam B Murphy
 1L Reading Group LAW-LW 12339 0.0 CR
 Topic: Impeachment and Executive Power
 Instructor: Samuel Estreicher

AHRS EHRS
 Current 15.5 15.5
 Cumulative 15.5 15.5

Spring 2019

School of Law
 Juris Doctor
 Major: Law
 Lawyering (Year) LAW-LW 10687 2.5 CR
 Instructor: Tal Kastner
 Legislation and the Regulatory State LAW-LW 10925 4.0 B
 Instructor: Roderick M Hills
 Criminal Law LAW-LW 11147 4.0 B+
 Instructor: Kim A Taylor-Thompson
 1L Reading Group LAW-LW 12339 0.0 CR
 Topic: Impeachment and Executive Power
 Instructor: Samuel Estreicher
 Survey of Intellectual Property LAW-LW 12469 4.0 B+
 Instructor: Christopher Scott Hemphill
 Financial Concepts for Lawyers LAW-LW 12722 0.0 CR

AHRS EHRS
 Current 14.5 14.5
 Cumulative 30.0 30.0

School of Law
 Juris Doctor
 Major: Law
 Art Law LAW-LW 10122 4.0 A-
 Instructor: Amy M Adler
 Evidence LAW-LW 11607 4.0 B+
 Instructor: Daniel J Capra
 Trademark and False Advertising Law LAW-LW 11923 4.0 B+
 Instructor: Barton C Beebe

AHRS EHRS
 Current 12.0 12.0
 Cumulative 42.0 42.0

Spring 2020

School of Law
 Juris Doctor
 Major: Law
 Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW) courses were graded on a mandatory CREDIT/FAIL basis.
 Criminal Procedure Survey LAW-LW 10436 4.0 CR
 Instructor: Andrew Weissmann
 Entertainment Law Seminar LAW-LW 11456 2.0 CR
 Instructor: Rose H Schwartz
 Professional Responsibility and the Regulation of Lawyers LAW-LW 11479 2.0 CR
 Instructor: Geoffrey P Miller
 State Courts and Appellate Advocacy Seminar LAW-LW 11869 2.0 CR
 Instructor: Albert M Rosenblatt
 Innovation Externship LAW-LW 12628 2.0 CR
 Instructor: Jason Michael Schultz
 Rashida Richardson
 Innovation Externship Seminar LAW-LW 12629 2.0 CR
 Instructor: Jason Michael Schultz
 Rashida Richardson

AHRS EHRS
 Current 14.0 14.0
 Cumulative 56.0 56.0

Fall 2020

School of Law
 Juris Doctor
 Major: Law
 Directed Research Option A LAW-LW 10737 2.0 A+
 Instructor: Jeanne C Fromer
 Antitrust Law LAW-LW 11164 4.0 B+
 Instructor: Christopher Scott Hemphill
 Federal Courts and the Federal System LAW-LW 11722 4.0 B
 Instructor: Trevor W Morrison
 Property LAW-LW 11783 4.0 A-
 Instructor: William E Nelson
 Religion and the First Amendment LAW-LW 12135 2.0 A
 Instructor: Schneur Z Rothschild

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 University Registrar
 www.nyu.edu/registrar

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Name: Zachary J Bass
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 Institution ID: 002785
 Page: 2 of 2



NEW YORK UNIVERSITY
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 School of Law
 FICE School Code: 002785

	AHRS	EHRS
Current	16.0	16.0
Cumulative	72.0	72.0

Spring 2021

School of Law	Juris Doctor	Major: Law			
Complex Litigation			LAW-LW 10058	4.0	B
Instructor:	Samuel Issacharoff				
	Arthur R Miller				
Free Speech			LAW-LW 10668	3.0	B+
Instructor:	Amy M Adler				
Copyright Law			LAW-LW 11552	4.0	A-
Instructor:	Jeanne C Fromer				
Constitutional Law			LAW-LW 11702	4.0	B
Instructor:	Melissa E Murray				
Journal of Intellectual Property and Entertainment Law			LAW-LW 12120	1.0	CR

	AHRS	EHRS
Current	16.0	16.0
Cumulative	88.0	88.0

Staff Editor - Journal of Intellectual Property & Entertainment Law 2019-2020
 Editor-in-Chief - Journal of Intellectual Property & Entertainment Law 2020-2021
 Jack J. Katz Memorial Award
 Journal of Intellectual Property and Entertainment Law Prize
End of School of Law Record

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 University Registrar
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UNIVERSITY OF ILLINOIS AT URBANA - CHAMPAIGN

Urbana, Illinois 61801

Student Name: Bass, Zachary James

University ID: 655531670

Issue Date: 30 - Mar - 22

Level: Undergrad - Urbana-Champaign

Day - Month of Birth: 09 - Mar

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Most Recent Program(s)			
College : Gies College of Business			
Major : Marketing			
Degree Awarded Bachelor of Science 10-AUG-2015			
Degree Information			
College : Gies College of Business			
Campus : Urbana-Champaign			
Major : Marketing			
Minor : Technology and Management			
Inst. Honors: High Honors			
Institution Information continued:			
Spring 2012 - Urbana-Champaign			
Gies College of Business			
Business Undeclared			
CLCV 120	The Classical Tradition	3.00 A	12.00
CS 105	Intro Computing: Non-Tech	3.00 A-	11.01
ECON 103	Macroeconomic Principles	3.00 A	12.00
ENGL 104	Intro to Film	3.00 A+	12.00
FR 102	Elementary French II	4.00 A-	14.68
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 61.69 GPA: 3.85			
Fall 2012 - Urbana-Champaign			
Gies College of Business			
Business Undeclared			
AAS 184	Asian American Cultures	3.00 A+	12.00
FR 103	Intermediate French I	4.00 A	16.00
PHIL 101	Introduction to Philosophy	3.00 A+	12.00
RHET 105	Principles of Composition	4.00 A	16.00
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 56.00 GPA: 4.00			
Deans List			
Spring 2013 - Urbana-Champaign			
Gies College of Business			
Marketing			
ACCY 201	Accounting and Accountancy I	3.00 A	12.00
ATMS 100	Introduction to Meteorology	3.00 A	12.00
ECON 202	Economic Statistics I	3.00 A	12.00
IB 105	Environmental Biology	3.00 A	12.00
PS 100	Intro to Political Science	3.00 A	12.00
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 60.00 GPA: 4.00			
Deans List			
Fall 2011 - Urbana-Champaign			
Gies College of Business			
Business Undeclared			
ANTH 143	Biology of Human Behavior	3.00 B	9.00
BUS 101	Business Prof Responsibility	2.00 A	8.00
CMN 101	Public Speaking	3.00 A-	11.01
ECON 102	Microeconomic Principles	3.00 A	12.00
FR 101	Elementary French I	4.00 A-	14.68
MATH 125	Elementary Linear Algebra	3.00 B	9.00
Ehrs: 18.00 GPA-Hrs: 18.00 QPts: 63.69 GPA: 3.53			
***** CONTINUED ON NEXT COLUMN *****			
Fall 2013 - Urbana-Champaign			
Gies College of Business			
Marketing			
ACCY 202	Accounting and Accountancy II	3.00 A-	11.01
BAAD 320	Principles of Marketing	3.00 A+	12.00
FR 104	Intermediate French II	4.00 A	16.00
***** CONTINUED ON PAGE 2 *****			

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Page 1

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Meghan Hazen, Registrar

Issued to: REFNUM: 20071011601

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UNIVERSITY OF ILLINOIS AT URBANA - CHAMPAIGN

Urbana, Illinois 61801

Student Name: Bass, Zachary James

University ID: 655531670

Issue Date: 30 - Mar - 22

Level: Undergrad - Urbana-Champaign

Day - Month of Birth: 09 - Mar

SUBJ NO.	COURSE TITLE	CRED GRD	PTS P
Institution Information continued:			
MSE 101	Materials in Today's World	3.00 A	12.00
TMGT 367	Mgmt of Innov and Technology	3.00 A	12.00
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.01 GPA: 3.93			
Deans List			
Spring 2014 - Urbana-Champaign			
Gies College of Business			
Marketing			
BADM 199	China Immersion Trip	2.00 A	8.00
BADM 310	Mgmt and Organizational Beh	3.00 A+	12.00
BADM 322	Marketing Research	3.00 A	12.00
BADM 325	Consumer Behavior	3.00 A	12.00
ECE 317	ECE Technology & Management	3.00 A-	11.01
TMGT 366	Product Design and Development	3.00 A	12.00
Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 67.01 GPA: 3.94			
Deans List			
Fall 2014 - Urbana-Champaign			
Gies College of Business			
Marketing			
BADM 329	New Product Development	3.00 A	12.00
BADM 350	IT for Networked Organizations	3.00 A	12.00
PSYC 201	Intro to Social Psych	3.00 A+	12.00
TAM 201	Mechanics for Technol & Mgmt	3.00 A	12.00
TMGT 460	Business Process Modeling	3.00 A	12.00
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 60.00 GPA: 4.00			
Deans List			
Spring 2015 - Urbana-Champaign			
Gies College of Business			
Marketing			
BADM 311	Individual Behavior in Orgs	3.00 A+	12.00
BADM 324	Purchasing and Supply Mgmt	3.00 A-	11.01
BADM 420	Advanced Marketing Management	3.00 A	12.00
BADM 449	Business Policy and Strategy	3.00 A+	12.00
TMGT 461	Tech, Eng, & Mgt Final Project	2.00 A	8.00
TMGT 461	Tech, Eng, & Mgt Final Project	2.00 A	8.00
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 63.01 GPA: 3.93			
Deans List			
***** CONTINUED ON NEXT COLUMN *****			

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
Summer 2015 - Urbana-Champaign			
Gies College of Business			
Marketing			
ECON 203	Economic Statistics II	3.00 A-	11.01
LA 314	History of World Landscapes	3.00 A+	12.00
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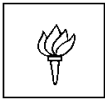
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Jeanne C. Fromer
Professor of Law

May 2, 2022

Dear Judge:

I am writing to recommend Zachary Bass for a clerkship in your chambers with my absolute highest enthusiasm. Since I became a law professor fifteen years ago, Zach has been among the handful of best students with whom I have had the pleasure of working. His academic accomplishments, superb writing, passion for and dedication to the law, maturity, insightful and strong analytical skills, his go-getter spirit, thoughtfulness, and modest, kind, and enthusiastic demeanor all indicate to me that a decision to hire Zach for a clerkship is loaded with high reward but very low risk.

I came to know Zach just before the beginning of his 2L year at NYU School of Law. With what I later learned was his characteristic initiative and enthusiasm, he reached out to me to ask if I might consider taking him on as a research assistant. We had not yet had the pleasure of meeting, and I very much appreciated his passion for intellectual property—my area of specialization—not to mention his previous experiences (including a judicial internship for a Sixth Circuit judge and his pre-law school work designing theme park rides). I had not been looking for a research assistant at the time, but as soon as he came by my office to meet with me, I was sold and knew I had to hire him. I am very grateful I did, because he has done superb work for me. To give but one example, I needed to get a sense of the law of Mickey Mouse because I was working with a documentarian on a history of Mickey Mouse (to be released on Disney+ this summer) and I would be speaking with him about the copyright and trademark issues that have been surrounding Mickey Mouse since he first appeared as Steamboat Willie in 1928. Zach took on the (admittedly fun) research project with gusto and diligence, returning to me a thorough, well-organized, and beautifully written research memo on the various intellectual property litigation matters concerning Mickey Mouse over the years, whether Disney or its licensees were plaintiff or defendant. Zach highlighted the most important aspects of each case and went above and beyond in finding images of the relevant Disney and other products at issue so I could see them for myself. Moreover, Zach went beyond my research request and looked into a history of how Disney has asserted its copyrights and trademarks in Mickey Mouse in trying to influence legislation and provided me with what ended up being very useful media reports contemporaneous with the copyright term extension Congress passed in the 1990s, thought to be influenced greatly by Disney wanting to ensure continuing copyright protection for Mickey Mouse. We interacted regularly in person and over email to discuss his findings, and I always found Zach to crackle with intelligence, intellectual curiosity, and analytic depth.

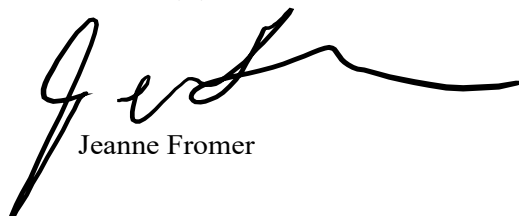
Zach was equally impressive in his other law school pursuits. In particular, he was a great editor in chief of the *NYU Journal of Intellectual Property and Entertainment Law*. Not only did he do the hard work of managing other student editors and reviewing and choosing content, but he went above and beyond to make wonderful things happen for the journal. For instance, he was able to procure a high-profile law review article published in the law journal by international pop star Pitbull and his legal team on trademarks for sounds (and in particular a yell that Pitbull has registered as a trademark). In this area as much as with the research he did for me, I was incredibly impressed with Zach's imagination and drive to go beyond merely what is required to achieve impactful results. He took similar initiative as President of NYU's Intellectual Property & Entertainment Law Society, where he organized fantastic events for students on careers in technology and entertainment law and fostered greater connections with NYU's Engelberg Center on Innovation Law & Policy, which I co-direct, as well as in working with NYU's medical school during this pandemic on an interdisciplinary COVID-19 response team.

Zach also demonstrated his considerable intellect, analytical skills, and drive in the ambitious and thorough student note he wrote on the recent Locast case in the Southern District of New York. That case involved a technology of retransmission of broadcast television signals, in which users could but did not have to pay to use it. The technology was developed to circumvent the Supreme Court's finding of copyright infringement for the Aereo service, which was similar except that it required payment. Locast relied on § 111 of the copyright laws, which exempts certain secondary transmissions of broadcast programming by cable systems from copyright's exclusive rights. Zach wrote the most thorough (and to my knowledge, only) note exploring the extensive legislative history of the section to assess how that should implicate whether Locast was infringing copyrights or was exempt from liability. Even though I specialize in copyright law, I learned so much from Zach's note. Moreover, I believe the lawyers on both sides of that case were eager to read and use his note to build their respective cases, something rare for a student note.

Since graduating law school, Zach has approached his legal career with the same gusto I have seen him give to everything else he does. I expect Zach will take his considerable skills and passion and use them to become a highly successful lawyer following law school. At Winston & Strawn, he is working on a variety of intellectual property matters, including patent, copyright, and trademark litigation. Additionally, he is representing (pro bono) a class of Rikers Island pre-trial detainees suing Mayor Eric Adams, and New York City Department of Correction and several state entities for injunctive relief under the New York State Constitution.

All in all, I cannot recommend Zach highly enough for you. I think he would make a wonderful addition to your chambers, what with his sharp analytical abilities, academic excellence, terrific writing skills, passionate approach to the law, and nice and modest demeanor. He has my highest recommendation. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,



Jeanne Fromer



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KRISHNAN PADMANABHAN
PARTNER
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April 13, 2022

Re: Recommendation of Zachary J. Bass

To Whom It May Concern:

I write to provide my enthusiastic recommendation for Zachary Bass's application for a clerkship in your chambers.

Zachary is among the finest young lawyers that I have had the pleasure of working with. His enthusiasm for the law and unrivaled work ethic have been invaluable, and help to energize our entire litigation team. His attention to detail put us all at comfort that each document he handles represents our best effort. While his time at Winston has been short, he has already handled a multitude of substantive litigation work, including motions to dismiss and a multitude of written discovery. In addition, Zach has shown a keen interest in patent law, and has already helped prepare Markman briefing, Markman presentations, and expert reports. His work has been exemplary across the board.

Zachary has also shown an unrivaled commitment to our pro bono efforts. He has been a critical member of a team pursuing impact litigation to remedy constitution violations on behalf of incarcerated persons at Rikers Island. This has required intense research to craft novel causes of action, and the preparation of detailed complaints and memorandums of law setting for the basis for those novel causes of action. On several occasions, I have been impressed by Zachary's insight on both the procedural aspects of litigation, as well as litigation strategy, which were well beyond his years.

Importantly, Zachary is a consummate team player, and has a growth mindset. He is the first to raise his hand to tackle any task, and consistently offers to help the members of his litigation team stay on task. And on the rare occasion when Zachary receives criticism, he takes it with a smile, and applies it constructively. Simply put, Zachary is an asset to any team, and I believe he would be a valuable addition to your chambers.

I hope this letter has been helpful in your assessment of Zachary's application. To the extent there is any additional information that I can provide, please do not hesitate to reach out.

****Signature on following page****

WINSTON
& STRAWN
LLP

April 13, 2022

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Padmanabhan', with a stylized flourish at the end.

Krishnan Padmanabhan, Esq.


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Katherine J. Strandburg

*Alfred Engelberg Professor of Law
Faculty Director, Information Law Institute*

Dear Judge:

I am delighted to recommend Zachary Bass for a clerkship in your chambers. I came to know Zach during his 3L year at NYU School of Law when he worked as a research assistant on my NSF grant relating to a longstanding project aimed at understanding how knowledge is governed and created in collaborative, commons-like arrangements. The project is based on the Governing Knowledge Commons framework, which collaborators and I developed as an extension of Elinor Ostrom's Nobel-prize-winning work on natural resource commons. Zach took on the role of leader of a team of students working on coding previously published case studies of user innovator communities according to the GKC framework. The work was challenging for law students without any social science background. The students were responsible for reading and understanding previous literature about innovation by users, learning about the GKC framework, and developing and applying a method for coding the case studies according to the framework. Overall, the group did an excellent job, due in great part to Zach's organizing capabilities. Zach also took on the task of preparing and presenting a summary of the work and overview of the project at the annual international Open and User Innovation Conference. (The fact that the work has not yet produced a publication is entirely due to the fact that I have not yet had time to follow up.) Even after graduating and completing his work for me, Zach followed up by seeking recommendations for further reading on the topic on knowledge commons.

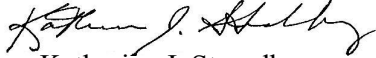
Zach is thoughtful and creative. As is evident from reading his law review note, he is a thorough and nuanced researchers and an excellent writer. He is also unusually self-motivated and well-organized. During the time he worked on my project, he took complete responsibility for organizing the group of research assistants and arranging meetings to report back on their efforts. He was similarly responsible for our presentation at the OUI conference – despite the fact that he was preparing for the bar exam at the time. I was very busy that semester and it seems highly likely to me that without Zach's willingness to take responsibility no progress would have been made on the project.

In sum, I believe that Zach would be a terrific addition to any judicial chambers. He is smart, enthusiastic, hardworking, and able to work independently. Personally, he is friendly and it seemed that my small team of RAs thoroughly enjoyed working under his leadership. I

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would be delighted to provide further information about Zach. I am reachable by phone at (773) 490-2241 or by email at katherine.strandburg@nyu.edu.

Sincerely,


Katherine J. Strandburg

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Matter of RAYMOND BELL)	
)	
On behalf of himself and all others similarly)	
situated,)	Case No.
Petitioners,)	
)	
-against-)	
)	
ERIC ADAMS, MAYOR OF THE CITY OF)	
NEW YORK; NEW YORK CITY)	
DEPARTMENT OF CORRECTION; LOUIS)	
A. MOLINA, COMMISSIONER OF THE)	
NEW YORK CITY DEPARTMENT OF)	
CORRECTION; NEW YORK CITY BOARD)	
OF CORRECTION; NEW YORK STATE)	
COMMISSION OF CORRECTION; and NEW)	
YORK STATE DEPARTMENT OF)	
CORRECTIONS AND COMMUNITY)	
SUPERVISION,)	
)	
Respondents.)	
)	
)	

**PETITIONER RAYMOND BELL'S MEMORANDUM OF LAW IN SUPPORT OF HIS
REQUEST FOR PRELIMINARY INJUNCTION**

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 Evan Miller
 Sean Anderson
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 Fax: 212-294-4700
Attorneys for Petitioners

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U.S. Const. amend. XIV	10
Umair Irfan, <i>We Regret to Inform You That We Are Now Discussing Subvariants</i> , Vox.com, Feb. 10, 2022, https://www.vox.com/22923891/omicron-subvariant-ba2-coronavirus	25

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Petitioner Raymond Bell, on behalf of himself and all others similarly situated (collectively, “Petitioners”), submits this memorandum of law in support of his request for preliminary injunctive relief, pursuant to New York Civil Practice Law and Rule (“CPLR”) § 6301, in connection with his complaint for declaratory relief and Article 78 mandamus to compel as to Respondents Eric Adams, Mayor of the City of New York; New York City Department of Correction (“DOC”); Louis A. Molina, Commissioner of the DOC; New York City Board of Correction; New York State Commission of Correction; and New York State Department of Corrections and Community Supervision (collectively, “Respondents”).

PRELIMINARY STATEMENT

The DOC has a known staffing crisis, and Respondents have failed to act to correct it. Specifically, Respondents have failed to enact, effectuate, and enforce corrective policies and procedures ensuring that Rikers Island is operated with “Effective Staffing”—defined as and used hereinafter to mean: (1) an appropriate number of staff for the population detained at Rikers; (2) staff that report to work when they are required to do so; (3) staff that are allocated to appropriate positions for the needs of the population; and (4) staff that perform their work as directed and required, in order to guarantee the constitutional rights of all incarcerated persons at the facility. As a result, Petitioners continue to suffer constitutional violations, including, but not limited to, physical violence and a continued risk of the same; the inability to obtain medical treatment; unsanitary and unhealthy conditions; and the inability to appear for scheduled court appearances. Thus, this Court’s intervention is necessary and warranted.

To address this ongoing constitutional crisis, Petitioners request a preliminary injunction, pursuant to CPLR § 6311, restraining Respondents from admitting any new pretrial detainees to

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Rikers Island pending resolution of the instant complaint for declaratory relief and Article 78 petition.

FACTUAL BACKGROUND

I. The Violent, Unsanitary, and Mismanaged Conditions at Rikers Island Are Getting Worse, Not Better, Due to Effective Staffing Failures

a. Effective Staffing failures cause the unconstitutional conditions at Rikers

Respondents' Effective Staffing failures with respect to Rikers, as detailed herein, are at the root of the chaos at the facility, which is mired in increased violence, the failure to provide medical attention, disgustingly unsanitary and unhealthy conditions, and the failure to get incarcerated persons to their court appearances. In 2015, the Southern District of New York—in *Nunez v. City of New York*—ordered monthly monitoring of the facility to ensure that the constitutional rights of young inmates were protected. *See* Consent Judgment, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Oct. 21, 2015), ECF 249. However, as the *Nunez* Monitor reports and as media has confirmed, “slashings and stabbings [are] up and detainees ha[ve] gained control over some housing units.”¹ In fact, “[d]ata on uses of force, fights, stabbings, and slashings among people in custody and assaults on Staff reveal that 2021 has been the most dangerous year since the Consent Judgment went into effect.”² Effective Staffing failures are the reason.³

According to a January 26 “affidavit filed in Bronx County Supreme Court, the DOC submitted internal records that show inmates were not produced for medical appointments 7,070 times in December, even after a judge issued an emergency order requiring them to improve access

¹ Jan Ransom & Bianca Pallaro, *Behind the Violence at Rikers, Decades of Mismanagement and Dysfunction*, N.Y. TIMES (Dec. 31, 2021), <https://www.nytimes.com/2021/12/31/nyregion/rikers-island-correction-officers.html>.

² Twelfth Report of the *Nunez* Independent Monitor, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF, at 20 (S.D.N.Y. Dec. 6, 2021), ECF 431 (hereinafter, “Twelfth *Nunez* Monitor Report”).

³ *Id.*, at 17-18.

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to health services.”⁴ The DOC admitted that “[i]n 1,061 of these instances, . . . inmates weren’t brought to their appointment because there was no one available to escort them.”⁵ The Chief Medical Officer of Correctional Health Services, Dr. Ross MacDonald, cited “the unavailability of correction officers – hundreds of whom do not show up for work each day” as the root cause of the medical delay.⁶ And the DOC’s own Bureau Chief of Facility Operations admits Effective Staffing is to blame. *See* Petitioners’ Mem. of Law in Support of Their Order to Show Cause for Contempt (“Petitioners’ MOL”), at 11, *In re Agnew v. New York City Dep’t of Correction*, No. 813431-2021E (N.Y. Sup. Ct. Feb. 1, 2022), NYSCEF Doc. No. 105.

The unsanitary conditions at Rikers have only become worse because of the lack of Effective Staffing. For example, on a January 7, 2022 visit, New York City councilpersons noted “the strong smell of urine in an intake area with 10 men crowded together” and observed persons “sleeping with food on the floor, dirty.”⁷ A DOC correction officer admitted that the DOC does not “have the staff to go to the housing areas to pick up the inmates to do . . . cleaning,” which is apparently incarcerated persons’ responsibility.⁸ The squalor and overcrowding in intake areas documented by the media are also a direct result of Effective Staffing failures.⁹ Between June and September 2021, internal records indicate that at least 256 incarcerated persons remained in

⁴ Gabrielle Fonrouge, *NYC DOC officials admit inmates aren’t getting medical care, court records show*, N.Y. POST, Feb. 1, 2022, <https://nypost.com/2022/02/01/nyc-doc-officials-admit-inmates-arent-getting-medical-care-court-records/>.

⁵ *Id.*

⁶ *Id.*

⁷ Graham Rayman, *Rikers Island Conditions Still Horrific, Say NYC Council Members After Tour*, N.Y. DAILY NEWS, Jan. 7, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-council-visit-20220107-6kz33mvsmgizcmwyj4grflaxq-story.html>.

⁸ Beth Schwartzapfel, *Dispatch From Deadly Rikers Island: “It Looks Like a Slave Ship in There”*, THE MARSHALL PROJECT (Oct. 5, 2021), <https://www.themarshallproject.org/2021/10/05/dispatch-from-deadly-rikers-island-it-looks-like-a-slave-ship-in-there>.

⁹ *See* Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST, Oct. 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/>.

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dangerous and unsanitary intake areas beyond 24 hours because of “medical delay” and “shortage of the DOC staff.”¹⁰ The conditions have become terrible enough that in January 2022, hundreds of incarcerated persons engaged in nonviolent protest as they staged a hunger strike “against continuing poor conditions at the troubled complex, as frustrations mounted over a Covid-19-imposed quarantine,” highlighting the unhygienic conditions and frequent violence.¹¹

Respondents’ failure to provide Effective Staffing also keeps incarcerated persons from being able to show up in court when scheduled, whether in person or virtually.¹² Indeed, there are not even enough officers to escort such incarcerated persons to areas within the facility that have video conferencing capability so that detainees may attend virtual hearings.¹³

The DOC staff absenteeism is a major reason for the Effective Staffing crisis,¹⁴ but not the only reason, as the *Nunez Monitor* reports that staff who actually show up to work are misallocated.¹⁵ Moreover, even if staff report to work, they do not perform their assigned duties. For example, during a so-called “fight night” incident in October 2021, when numerous fights between incarcerated persons were taking place within cells, correction officers simply observed

¹⁰ *See id.*

¹¹ Jonah E. Bromwich, *Hundreds at Rikers Protest Conditions, Citing Covid and the Cold*, N.Y. TIMES, Jan. 11, 2022, <https://www.nytimes.com/2022/01/11/nyregion/rikers-island-hunger-strike.html>.

¹² *What’s the Justice System’s Role in Driving the Jail Population Up?*, N.Y.C. MAYOR’S OFFICE OF CRIM. J., at 6, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/10/Whats-the-justice-systems-role-in-driving-the-jail-population-up.pdf>; Reuven Blau, *Justice Delayed: City Jail Staff Shortage Keeps Detainees From Getting to Court*, THECITY.NYC, Sept. 14, 2021, <https://www.thecity.nyc/2021/9/14/22674823/nyc-rikers-jail-staff-shortage-keeps-detainees-from-court> (concluding the reason for the failure to bring detainees to court is, according to the President of the Assistant Deputy Wardens/Deputy Wardens Association, “[t]he jails are overwhelmed and understaffed”).

¹³ *Id.*

¹⁴ Commissioner Molina noted on January 11, 2022 “that 2,300 of the close to 9,000 staff members are currently out sick,” which is close to 26% of the DOC’s work force. Jonah E. Bromwich, *Hundreds at Rikers Protest Conditions, Citing Covid and the Cold*, N.Y. TIMES, Jan. 11, 2022, <https://www.nytimes.com/2022/01/11/nyregion/rikers-island-hunger-strike.html>.

¹⁵ Twelfth *Nunez Monitor* Report, at 34-35; *see also* Jan Ransom & Bianca Pallaro, *Behind the Violence at Rikers, Decades of Mismanagement and Dysfunction*, N.Y. TIMES, Dec. 31, 2021, <https://www.nytimes.com/2021/12/31/nyregion/rikers-island-correction-officers.html> (“[O]n days this year when guard posts in volatile Rikers housing units went unfilled, hundreds of other correction officers were stationed elsewhere in less dangerous positions, including as secretaries, laundry room supervisors and even bakers.”).

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the violence, did nothing to intervene, and even told detainees “to ‘quiet things down’ and make the violence appear less obvious to [other corrections officers].”¹⁶ As further examples, staff fail to perform even the most rudimentary tasks that would ensure security at Rikers, including failing to secure doors, gates, and cells; failing to control ingress and egress to unauthorized areas or to control detainee access to other incarcerated persons for the purpose of doing harm; and failing to remain at assigned posts until relief arrives or permission is given to depart the post.¹⁷ Perhaps most striking is that Respondents have ceded entire housing units to incarcerated persons, resulting in violence to others.¹⁸

Put simply, due to Respondents’ Effective Staffing failures, incarcerated persons at Rikers are suffering ongoing constitutional violations.

b. Effective Staffing Issues Are Not Likely to Improve Soon

The *Nunez* Monitor has concluded that the problems at Rikers are foundational and that no immediate solutions would be possible; the requirements set forth in the court-mandated Consent Judgment “assume a crucial and basic level of capability, competence, and adherence to foundational corrections practices that the Department simply lacks.”¹⁹ Indeed, Respondents have failed to take actions to address the systemic problems at Rikers, and in some cases have acted to make the problems *worse*, as discussed further below.

II. Petitioner Bell Continues to Suffer Due Process Violations Due to These Conditions

¹⁶ *People ex rel. Burse v. Schiraldi*, No. 21-53252, 2021 WL 6069159, at *3 (N.Y. Sup. Ct. Dec. 22, 2021).

¹⁷ Twelfth *Nunez* Monitor Report, at 17.

¹⁸ *See Burse*, 2021 WL 6069159, at *2-3; Jan Ransom, *A Look Inside Rikers: ‘Fight Night’ and Gang Rule, Captured on Video*, N.Y. TIMES (Jan. 12, 2022), <https://www.nytimes.com/2022/01/12/nyregion/rikers-jail-videos.html>.

¹⁹ Twelfth *Nunez* Monitor Report, at 8.

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The deplorable conditions at Rikers are gravely dangerous for people, like Petitioner Bell, who have preexisting conditions that require regular medical supervision. Because of a gunshot wound to Petitioner Bell's head, fluids excessively gather in his skull. Doctors have informed Petitioner Bell that, to remain alive, those fluids must be routinely drained, and he must avoid further physical contact to his head. Doctors also mandated that he receive physical therapy. Yet, despite being told of his preexisting conditions, the DOC has done nothing to protect Petitioner Bell. He has not received his prescribed drainage nor any physical therapy. Indeed, Respondents' failures have only placed Petitioner Bell at further risk of loss of life.

Upon first arrival, Petitioner Bell was left in an overcrowded intake area surrounded by incarcerated persons charged with violent crimes. Thus, Petitioner Bell reports being unable to sleep during the four to five days he was in intake, out of fear that another detainee would strike him in the head, which would be fatal due to his brain injury.

Since leaving intake, Petitioner Bell has been attacked twice by fellow incarcerated persons, which could have life-threatening consequences in light of his head injury. No staff intervened on either occasion.

Further, the DOC's lack of Effective Staffing has created a situation where incarcerated persons with preexisting conditions are not separated from those with COVID-19. On one occasion, Petitioner Bell was moved into a cell where an incarcerated person who contracted COVID was leaving, and no officers took any sanitary precautions before Mr. Bell entered that cell.

Petitioner Bell has suffered from asthma since he was a child. To address his asthma, Petitioner Bell has requested masks and an inhaler. However, Petitioner Bell reports that no incarcerated person in his facility is provided with a mask outside of visitation hours. Moreover,

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it took the DOC five months to provide Petitioner Bell with an inhaler. During that time, he suffered an asthma attack. It is well documented that numerous preexisting conditions, including asthma, act as a co-morbidity with COVID-19, substantially increasing the likelihood of severe illness or death if COVID-19 is contracted.²⁰ Petitioner Bell's vulnerable condition, in light of his brain injury that has not been sufficiently treated, also continues to put him at substantial risk from grave consequences were he to get COVID-19.

III. Respondents Are Aware of the Conditions at Rikers and Have Failed to Act

Respondents have actual knowledge of the conditions at Rikers and the lack of Effective Staffing that causes them. But Respondents have not acted to protect Petitioners' constitutional rights, as detailed below. The *Nunez Monitor's* latest report details the DOC's ongoing Effective Staffing failures, and the letter written by former DOC Commissioner Vincent Schiraldi underscores the DOC's knowledge of the dire situation within Rikers, including the fact that Effective Staffing is leading to unprecedented levels of violence.²¹

Despite the ongoing health care crisis at the facility, as of November 2021, the New York City Board of Correction (the "City Board") "issued no notices of violation since the pandemic began, not even after City Board members documented 'horrible' conditions while investigating a death at Rikers in April,"²² and even after intake duration and hygiene conditions violated its minimum standards.²³ The New York State Commission (the "State Commission") and the

²⁰ *People with Certain Medical Conditions*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

²¹ See Ex. A.

²² James Barron, *The Jail Oversight Board That Failed to Sound the Alarm*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/nyregion/board-of-corrections-jails-nyc.html>.

²³ *Id.*

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Department of Corrections and Community Supervision (“DOCCS”) have also failed to promulgate policies or otherwise act to prevent the constitutional violations at Rikers.

Commissioner Molina has actually rolled back restrictions on the DOC’s sick leave policy,²⁴ which at least was aimed at ensuring some level of accountability for the thousands of the DOC staff that seem to be sick on a daily basis. As a result, the DOC officers are no longer required to show proof of illness to earn a sick day (unless they seek to miss three consecutive days).²⁵ And, naturally, by January 4, approximately 2,600 of the DOC’s 7,800 uniformed persons were out sick.²⁶ Commissioner Molina also fired the DOC’s top internal investigator, Sarena Townsend.²⁷ Townsend had, among other things, aggressively investigated the DOC officers’ use of force against incarcerated persons. These changes will predictably worsen the situation.

Mayor Adams has publicly announced his plan to end gun violence.²⁸ However, the plan includes changes to bail reform laws that are likely to incarcerate a greater number of people. This will only further exacerbate an already untenable situation at Rikers. Otherwise, the Mayor has failed to take any substantial steps to address this crisis at Rikers.

LEGAL STANDARD

²⁴ This decision was made even after media reports suggest that staff members are abusing sick leave—nine officers were seen at a party after being absent due to sick leave. Graham Rayman, *Hundreds of Rikers Island correction officers abused sick leave*, N.Y. DAILY NEWS (Jan. 23, 2022), <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-island-correction-officers-abusing-sick-leave-policies-covid-20220124-24qbfqnuizfzjfjavvumw2ys4-story.html>.

²⁵ Jacob Kaye, *DOC scales back ‘punitive’ sick leave policy*, QUEENS DAILY EAGLE, Jan. 6, 2022, <https://queenseagle.com/all/doc-scales-back-punitive-sick-leave-policy>.

²⁶ *Id.*

²⁷ Jan Ransom, *Jail Unions Gain a Powerful Supporter: The New Mayor*, N.Y. TIMES, Jan. 14, 2022, <https://www.nytimes.com/2022/01/14/nyregion/rikers-jail-unions-eric-adams.html>.

²⁸ M. K. Kaishian, *Eric Adams’ “Blueprint To End Gun Violence” Is a Trojan Horse*, SLATE (Jan. 28, 2022), <https://slate.com/news-and-politics/2022/01/eric-adams-blueprint-to-end-gun-violence-isnt-really-an-anti-violence-plan.html>.

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A court should grant a preliminary injunction upon a petitioner's showing of: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. *See, e.g., Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988).

ARGUMENT

I. Petitioners' Due Process Claims Are Meritorious and Likely to Succeed

The health of incarcerated persons is the responsibility of the governments that choose to incarcerate them. *People ex rel. Squirrell v. Langley*, 68 Misc. 3d 498, 506 (N.Y. Sup. Ct. 2020); *People ex rel. Stoughton v. Brann* ("Jeffrey/Stoughton v. Brann"), 67 Misc. 3d 629, 630 (N.Y. Sup. Ct. 2020). Further, "prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *People ex rel. Burse v. Schiraldi*, 2021 N.Y. Slip. Op. 21351, at *4 (N.Y. Sup. Ct. Dec. 22, 2021) (citation omitted).

Indeed, the United States Constitution requires the government to effectively care for inmates. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976); *Brown v. Plata*, 563 U.S. 493, 507-09 (2011); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *see also Estelle*, 429 U.S. at 103-04 ("The infliction of [] unnecessary suffering is inconsistent with contemporary standards of decency . . . 'it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.'"). Similarly, "Article 1, Section 6 of the New York State Constitution provides comparable protection to pretrial inmates." *Langley*, 68 Misc. 3d at 506 (citing *Kingsley v. Hendrickson*, 576 U.S. 389 (2015); *Cooper v. Morin*, 49 NY2d 69 (1979)).

A Due Process claim brought pursuant to Article 1, § 6 of the New York State Constitution and raised by a pretrial detainee concerning his conditions of incarceration is governed by the legal

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standard set forth in *Cooper*. See *People ex rel. Coleman v. Brann*, 68 Misc.3d 204, 211 (Bronx Sup. Ct. 2020) (citing *Cooper*, 49 N.Y.2d at 69). Recently, this court stated:

To establish a Due Process Clause claim for unconstitutional conditions of confinement, a pretrial detainee must show that prison officials acted with “deliberate indifference” to the challenged conditions. A pretrial detainee must satisfy two prongs to establish a deliberate indifference claim: an “objective prong” showing that the challenged conditions were sufficiently serious to constitute objective deprivations of the right to due process, and a “*mens rea* prong” showing that the officer acted with at least deliberate indifference to the challenged conditions. To establish an objective deprivation, a pretrial detainee must show that the prison conditions pose an unreasonable risk of serious damage to physical and mental health. There is no “static test” for determining whether a deprivation is sufficiently serious.

Burse, 2021 N.Y. Slip. Op. 21351, at *5 (internal citations omitted); see also *People ex rel. Stoughton v. Brann*, 185 A.D.3d 521, 522 (1st Dep’t 2020) (“The State Constitution is violated in condition-of-confinement cases where there is deliberate indifference, but the analysis also requires a balancing of the harm to the individual resulting from the alleged conditions against the benefit sought by the State through the continuation of the condition.”); *Coleman v. Brann*, 68 Misc. 3d at 211 (stating same).

In this case, Effective Staffing failures have created life-threatening conditions that violate Petitioners’ Due Process rights. For the following reasons, Petitioners are likely to succeed on the merits of their claims.

a. Conditions at Rikers pose an unreasonable risk of serious damage to Petitioners’ physical and mental health.

Respondents’ Effective Staffing failures have caused the increase in stabbings and violence and continued risk thereof within Rikers; the unavailable medical attention for incarcerated persons; the unsanitary conditions; and the restriction of detainees’ ability to make court appearances, which, collectively and separately, constitute objective deprivations of the right to due process. See, e.g., *Burse*, 2021 N.Y. Slip. Op. 21351, at *7-8 (finding due process violation

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where unacceptable risk of harm to Petitioner was due in part to staffing failures);²⁹ *Jeffrey/Stoughton v. Brann*, 67 Misc. 3d at 631 (“[T]he presence of a communicable disease in a prison can constitute a serious, medically threatening condition.”).

Due to Effective Staffing failures, Petitioners face a constant and persistent risk of violence at Rikers, and the violence and threat thereof is *increasing*. As the *Nunez* Monitor has reported, 2021 was “the most dangerous year” at Rikers “since the Consent Judgment went into effect.”³⁰ “[S]lashings and stabbings [are] up, and detainees ha[ve] gained control over some housing units.”³¹ Indeed, the situation is so perilous that “[o]ften, with only the slightest provocation (exacerbated by abnormally high levels of fear), the environment erupts in violence and physical encounters between and among people in custody and Staff.”³²

The former DOC Commissioner, Vincent Schiraldi, admitted that the “staffing crisis has contributed to unprecedented levels of tension, anxiety, and violence within the jails.” Ex. A. The *Nunez* Monitor reported on “the security lapses that are prevalent throughout the [DOC]” and that led to the following in the months of July and August 2021 alone: gang fights after staff left housing unit doors unsecured; attempts by detainees to enter the DOC control station because housing unit doors were left unsecured, necessitating a staff use of force against the detainee; assaults on corrections officers after housing unit doors were left unsecured; incarcerated persons who were not properly restrained reaching a facility corridor where they were able to attack other detainees; additional detainee-on-detainee violence when staff left their post without securing

²⁹ While *Burse* was decided under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, “Article 1, Section 6 of the New York State Constitution provides comparable protection to pretrial inmates.” *Langley*, 68 Misc. 3d at 506 (citing *Kingsley*, 576 U.S. 389; *Cooper*, 49 NY2d 69).

³⁰ Twelfth *Nunez* Monitor Report, at 20.

³¹ Jan Ransom & Bianca Pallaro, *Behind the Violence at Rikers, Decades of Mismanagement and Dysfunction*, N.Y. TIMES, Dec. 31, 2021, <https://www.nytimes.com/2021/12/31/nyregion/rikers-island-correction-officers.html>.

³² Twelfth *Nunez* Monitor Report, at 19.

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cells; additional detainee-on-staff violence when no staff was present in a housing area and the housing unit door was unsecured, allowing detainees to exit the unit and assault a corrections officer.³³ The *Nune* Monitor noted that this system, which “is rife with violence and disorder,” could be resolved by correcting for Effective Staffing, including by providing “more effective leadership, Staff accountability, and efforts to deploy uniformed Staff more appropriately and efficiently.”³⁴

Tyrone Greene, an incarcerated person at Rikers, noted, “When I was attacked, there was no officer working on the floor, and that was a Monday.”³⁵ Petitioner Bell has similarly been attacked twice by other detainees; no staff member intervened on either occasion. *See Verified Petition* ¶ 41.

Courts have found due process violations arising from this constant and unabated threat of violence, where the DOC “failed to protect [the detainee] from constant physical violence and the implicit threat of violence engendered by the DOC ceding control of the housing units to detainees.” *Burse*, 2021 WL 6069159, at *6. Media reports have echoed those findings and documented the continuous violence at Rikers; incarcerated persons run entire housing units, where new entrants to such units are attacked and where “fight nights”—in which detainees pummel each other inside cells—continue until the detainee-leader of the housing unit decides the fight can stop.³⁶

³³ *See* Twelfth *Nunez* Monitor Report, at 24-25.

³⁴ *Id.* at 32.

³⁵ Cory James, *Rikers Island Reports 2nd Inmate Death in Less Than a Week*, NEWYORK.CBSLOCAL.COM, Dec. 15, 2021, <https://newyork.cbslocal.com/2021/12/15/rikers-island-inmate-deaths-william-brown/>.

³⁶ Jan Ransom, *A Look Inside Rikers: ‘Fight Night’ and Gang Rule, Captured on Video*, N.Y. Times (Jan. 12, 2022), <https://www.nytimes.com/2022/01/12/nyregion/rikers-jail-videos.html>; *see also Burse*, 2021 WL 6069159, at *3.

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Petitioners cannot get necessary medical attention because of the lack of Effective Staffing at Rikers. Courts have found that the failure to provide adequate medical attention to incarcerated persons on an ongoing basis is a condition “sufficiently serious to pose a risk of serious damage to [a detainee’s] physical and mental soundness.” *Id.* Respondents’ ongoing failure to provide medical attention to the persons within its charge is so rampant that on December 3, 2021, a New York supreme court entered an order to show cause granting a class of Article 78 petitioners’ request for mandamus relief. The order required the DOC to, among other things, “comply with its duties under state and local law to provide incarcerated people in New York City jails with access to medical services, and to . . . discharge its ministerial duties to safely keep . . . each person . . . by providing sufficient security for movement by incarcerated persons to and from health service areas and not prohibiting or delaying incarcerated persons’ access to care, appropriate treatment, or medical or dental services . . .” Judgment/Order at 1-2, 6-7, *In re Agnew v. New York City Dep’t of Correction*, No. 813431-2021E (N.Y. Sup. Ct. Dec. 6, 2021), NYSCEF Doc. No. 81.

In a recent request for an additional order to show cause, Petitioners argued for civil contempt to be adjudged against the DOC for its failure to comply with the December 3, 2021 Order in *Agnew*. See [Proposed] Order to Show Cause, *In re Agnew*, No. 813431-2021E (N.Y. Sup. Ct. Feb. 1, 2022), NYSCEF Doc. No. 86. The *Agnew* Petitioners set forth facts to show that, despite the December 3, 2021 Order, “[the] DOC has admitted that it is not complying with the Court’s Order to provide those in DOC’s custody with access to medical care,” and notes that Chief Ada Pressley of the DOC Facility Operations admits that instances of non-production to medical appointments “does not constitute substantial compliance with the pertinent directives to

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provide timely access to the [medical] clinics.” *See* Petitioners’ MOL, at 3-4, 10, *In re Agnew*, No. 813431-2021E (N.Y. Sup. Ct. Feb. 1, 2022), NYSCEF Doc. No. 105.

Critically, Chief Pressley also noted that it is *Effective Staffing* failures—including a “spike in absenteeism”—that are responsible for the DOC’s failure to comply with applicable directives and the December 3, 2021. *Id.* at 11. Whether Chief Pressley accurately attributes the Effective Staffing failures (and in particular the absenteeism) to a purported Omicron surge among personnel is of no moment; the fact is that, as discussed in the Verified Petition and herein, Respondents’ failure to provide Effective Staffing began long before Omicron, and even COVID, and cannot excuse their failure to provide Effective Staffing or, more importantly, adequate medical care.

The DOC internal records demonstrate that incarcerated persons were not produced for medical appointments 7,070 times in December 2021, even after a judge issued an emergency order requiring them to improve health care access.³⁷ The DOC admitted that “[i]n 1,061 of these instances, . . . inmates weren’t brought to their appointment because there was no one available to escort them, court records show.”³⁸ The root cause of this delay was also noted by the chief medical officer of Correctional Health Services, Dr. Ross MacDonald: “the unavailability of correction officers – hundreds of whom do not show up for work each day.”³⁹

Last, but perhaps most significantly, 15 inmates died in custody at Rikers in 2021, many of them by suicide or after prolonged periods without receiving medical attention despite alerting

³⁷ Gabrielle Fonrouge, *NYC DOC officials admit inmates aren’t getting medical care, court records show*, N.Y. POST, Feb. 1, 2022, <https://nypost.com/2022/02/01/nyc-doc-officials-admit-inmates-arent-getting-medical-care-court-records/>.

³⁸ *Id.*

³⁹ *Id.*

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staff.⁴⁰ Petitioner Bell recounts that the DOC staff ignored a detainee who continuously complained about his worsening condition, and who eventually collapsed, cracking his skull on the ground. The DOC Medical took two hours to respond to the incident, but by then, the incarcerated person had died.⁴¹ And Petitioner Bell himself has failed to receive medical attention due to lack of Effective Staffing, including receiving no drainage of the fluids in his skull or physical therapy as prescribed, receiving an inhaler to address his asthma after waiting for five months, during which time he suffered an asthma attack, and being told that he “should just die” when complaining of his medical condition to the DOC medical staff.

Respondents’ failure to ensure Effective Staffing thus has caused, and continues to cause, violations of due process rights among incarcerated persons, including Petitioners.

Effective Staffing failures result in Petitioners’ confinement in squalid, unsanitary conditions that increase their exposure to communicable diseases, including COVID-19, which is potentially deadly and otherwise known to contribute to lasting negative health effects. The horrid and degrading conditions in which detainees are incarcerated at Rikers are, by now, well known in even the public sphere. The media has reported over months about the horrid conditions of confinement, and New York City councilpersons have remarked on the squalid state of intake and living areas at Rikers. For example, on a January 7, 2022 visit, New York City councilpersons noted “the strong smell of urine in an intake area with 10 men crowded together” and observed persons “sleeping with food on the floor, dirty.”⁴² Just recently, during the first week

⁴⁰ Bliss Broyard & Lisa Riordan Seville, *Rikers: The Obituaries. Fifteen people at the jail died in 2021. These are their lives – and how they came to an end*, THE INTELLIGENCER (Dec. 27, 2021), <https://nymag.com/intelligencer/article/rikers-inmates-died-2021.html>.

⁴¹ This story has been corroborated by the press. Jan Ransom, *On Rikers, Brooklyn Man Becomes Latest Detainee to Die in Custody*, N.Y. TIMES, Dec. 15, 2021, <https://www.nytimes.com/2021/12/15/nyregion/rikers-island-deaths.html>.

⁴² Graham Rayman, *Rikers Island Conditions Still Horrific, Say NYC Council Members After Tour*, N.Y. DAILY NEWS, Jan. 7, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-council-visit-20220107-6kz33mvsnvzgicmwj4grflaxq-story.html>.

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of February, a New York City councilmember said incarcerated persons “have to use water bottles as shower heads.”⁴³

Incarcerated persons have been observed using bags as communal toilets.⁴⁴ In September 2021, “[l]awmakers who toured Rikers . . . said it’s filthy and inhumane, with overflowing toilets and floors covered in dead cockroaches, feces and rotting food.”⁴⁵

Further, images published by the *New York Post* show at least 26 men stuffed body-to-body inside of a single cell while being processed for intake because the DOC lacks sufficient staff to process them in a timely fashion.⁴⁶ Between June and September 2021, internal records indicate that at least 256 incarcerated persons remained in these dangerous and unsanitary intake areas beyond 24 hours because of “medical delay” and “shortage of DOC staff.”⁴⁷ In response, former Mayor Bill de Blasio enacted regulation recommending that all incarcerated persons spend no more than 24 hours in intake units.⁴⁸ Nevertheless, media reports collectively show that this goal has yet to be attained and, if anything, conditions have worsened.⁴⁹

⁴³ *Local Leader Says Poor Conditions Continue at Rikers Island After Visit This Week*, BRONX.NEWS12.COM (Feb. 3, 2022), <https://bronx.news12.com/local-leader-says-poor-conditions-continue-at-rikers-island-after-visit-this-week>.

⁴⁴ See Deanna Paul, *Rikers Island Conditions Spiral Out of Control for Inmates and Officers*, WALL ST. J., Sept. 19, 2021, <https://www.wsj.com/articles/rikers-island-conditions-spiral-out-of-control-for-inmates-and-officers-11632063601>.

⁴⁵ Michael Sisak, *NYC’s Rikers Island Jail Spirals Into Chaos Amid Pandemic*, U.S. NEWS, Sept. 16, 2021, <https://www.usnews.com/news/politics/articles/2021-09-16/nycs-rikers-island-jail-spirals-into-chaos-amid-pandemic>.

⁴⁶ See Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST, Oct. 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/>.

⁴⁷ See *id.*

⁴⁸ Press Release, Office of the Mayor of N.Y.C., Mayor de Blasio Unveils Emergency Rikers Relief Plan (Sept. 14, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/614-21/mayor-de-blasio-emergency-rikers-relief-plan#:~:text=NEW%20YORK%E2%80%9494Mayor%20Bill%20de.address%20challenges%20on%20Rikers%20Island.&text=Adjust%20staffing%20at%20courts%20by.back%20to%20duty%20on%20Rikers>; see also Ari Ephraim Feldman, *Mayor says Rikers will shorten intake time after latest inmate death*, SPECTRUM NEWS N.Y. 1 (Sept. 21, 2021), <https://www.nyi.com/nyc/all-boroughs/news/2021/09/21/mayor-says-rikers-will-shorten-intake-time-after-la-test-inmate-death>.

⁴⁹ See, e.g., Graham Rayman, *Rikers Conditions Still Horrific, Say NYC Council Members After Tour*, N.Y. DAILY NEWS, Jan. 7, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-council-visit-20220107-6kz33mvsnmvgizcmwyj4grflaxq-story.html>; Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST, Oct. 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-conditions/>.

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At minimum, these conditions pose an unreasonable risk of serious damage to the mental health of Rikers incarcerated persons. State and local politicians who have toured Rikers described it as “horror island” after witnessing a detainee attempt to commit suicide during their tour.⁵⁰ The *Nunez Monitor* wrote to Judge Swain of the Southern District of New York that his team had observed “a disturbing rise in self-harming behavior.”⁵¹ Detainees have told lawmakers they feel like they are “being treated like slaves and animals.”⁵²

These conditions also pose an unreasonable risk of serious damage to the physical health of Rikers incarcerated persons, particularly in the time of COVID-19. In fact, according to former Commissioner Schiraldi, “all indications suggest that our jail population faces an equal or greater level of risk from COVID now as it did at the start of the pandemic.”⁵³ Moreover, Commissioner Schiraldi *admitted* that the DOC is incapable of adequately protecting its incarcerated persons or staff from COVID-19.⁵⁴

The fact is that incarcerated persons are forced to languish in the above-described filthy and unsanitary conditions alongside others who are potentially infected with COVID-19 and in which Effective Staffing failures prevent even the most basic cleaning efforts—let alone the sanitization required to disinfect housing and intake areas to prevent against COVID-19—from

[deadly-conditions/](#); Beth Schwartzapel, *Dispatch From Deadly Rikers Island: “It Looks Like a Slave Ship in There”*, THE MARSHALL PROJECT (Oct. 5, 2021, 6:00AM), <https://www.themarshallproject.org/2021/10/05/dispatch-from-deadly-rikers-island-it-looks-like-a-slave-ship-in-there>.

⁵⁰ Alexandra Hutzler, *Lawmakers Call NYC Jail ‘Horror Island’ After Seeing Inmate’s Attempted Suicide on Tour*, NEWSWEEK, Sept. 14, 2021, <https://www.newsweek.com/lawmakers-call-nyc-jail-horror-island-after-seeing-inmates-attempted-suicide-tour-1628928>.

⁵¹ Ltr. from S. Martin to Hon. Laura T. Swain, at 1, *Nunez v. City of New York*, No. 11-cv-05845 (S.D.N.Y. Sept. 23, 2021), ECF No. 387.

⁵² Michael Sisak, *NYC’s Rikers Island Jail Spirals Into Chaos Amid Pandemic*, U.S. NEWS, Sept. 16, 2021, <https://www.usnews.com/news/politics/articles/2021-09-16/nycs-rikers-island-jail-spirals-into-chaos-amid-pandemic>.

⁵³ Kristine Garcia & Kala Rama, *‘A crisis level’: Rikers COVID positivity skyrockets, DOC head urges inmate release*, PIX11 (Dec. 22, 2021, 1:01PM EST), <https://pix11.com/news/coronavirus/rikers-covid-positivity-skyrockets-head-of-doc-calls-for-release-of-inmates/>.

⁵⁴ *Id.*

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being performed. Indeed, Petitioner Bell was on one occasion moved into a cell where a COVID-19-positive detainee had been housed, and no sanitization was performed before Mr. Bell's entry. Further, a correction officer noted that "inmates are responsible for cleaning the building[,] . . . [b]ut we don't have the staff to go to the housing areas to pick up the inmates to do the cleaning."⁵⁵

In short, the unsanitary and inhumane conditions at Rikers violate incarcerated persons' due process rights. *Jeffrey/Stoughton v. Brann*, 67 Misc. 3d at 631 ("[T]he presence of a communicable disease in a prison can constitute a serious, medically threatening condition.").

Petitioners cannot get to court because of the lack of Effective Staffing. Compounding the fact that incarcerated persons are faced with violence, no medical attention, and living in squalor is the prevention of their appearing in court when required, which in turn prevents their cases from moving forward and them from potentially leaving Rikers. The New York City Mayor's Office on Criminal Justice reported that "court appearances by people in DOC custody have decreased drastically," and "the number and proportion of defendants . . . that are making their scheduled court appearances remains a fraction of the levels seen pre-pandemic."⁵⁶ The President of the Assistant Deputy Wardens/Deputy Wardens Association admitted that this is due to the fact that "[t]he jails are overwhelmed and understaffed."⁵⁷ Detainees are even prevented from attending

⁵⁵ Beth Schwartzapel, *Dispatch From Deadly Rikers Island: "It Looks Like a Slave Ship in There"*, THE MARSHALL PROJECT (Oct. 5, 2021), <https://www.themarshallproject.org/2021/10/05/dispatch-from-deadly-rikers-island-it-looks-like-a-slave-ship-in-there>.

⁵⁶ *What's the Justice System's Role in Driving the Jail Population Up?*, N.Y.C. MAYOR'S OFFICE OF CRIM. J., at 6, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/10/Whats-the-justice-systems-role-in-driving-the-jail-population-up.pdf>.

⁵⁷ Reuven Blau, *Justice Delayed: City Jail Staff Shortage Keeps Detainees From Getting to Court*, THE CITY.NYC, Sept. 14, 2021, <https://www.thecity.nyc/2021/9/14/22674823/nyc-rikers-jail-staff-shortage-keeps-detainees-from-court>.

virtual court hearings, as there are not enough officers to escort them to areas within the facility that have video conferencing capability.⁵⁸

Furthermore, as of February 17, 2022, **4,571** of the 5,629 people in DOC custody—**over 81%**—are detained **pretrial**.⁵⁹ The fact that pretrial detainees, **innocent until proven guilty**, are unable to access the courts in order to present their defense constitutes a clear deprivation of due process.

In sum, as in *Burse*, Respondents’ continuous failure to act to mitigate the unreasonable risks to incarcerated persons’ health and safety, as described above, constitutes an objective deprivation of Petitioners’ due process rights. *See Burse*, 2021 N.Y. Slip. Op. 21351, at *6-8. Therefore, Petitioner Bell is likely to succeed on the merits of his claim.

b. Petitioner Bell establishes the mens rea prong of the deliberate indifference test

Respondents’ Effective Staffing failure has caused the constitutional violations described herein, and Respondents know this, but have done nothing to remedy the situation. For example, since the federal monitorship of Rikers began **in 2015**, the *Nunez* Monitor “has repeatedly reported,” in reports submitted every four months, “that the City has established a record on [*sic*] non-compliance with the most fundamental goals of the consent settlement.” *Burse*, 2021 WL 6069159, at *1 n.2.

The *Burse* court held that neither prong of the deliberate indifference standard “requires a showing of unique injury.” *Id.* at *7. Instead, it is sufficient if the petitioner can show that “[the] DOC officials had actual knowledge of the threats to [the petitioner’s] health and safety.” *Id.* at *5. In finding sufficient *mens rea*, Judge Newbauer also relied on the facts set forth in the *Nunez*

⁵⁸ *Id.*

⁵⁹ *People in Jail in New York City: Daily Snapshot*, GREATER J. N.Y. | VERA INST., <https://greaterjusticenyc.vera.org/nycjail/> (last visited Feb. 18, 2022).

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Monitor Reports. *Id.* Here, the most recent *Nunez* Monitor Report from December 6, 2021 only further cements the DOC’s awareness of the Effective Staffing failures that threaten Petitioner Bell and other current and future incarcerated persons at Rikers Island. For example:

- “conditions [at Rikers have] been deteriorating along a new trajectory . . . [and] have progressively and substantially worsened”;⁶⁰
- “the DOC simply lacks . . . a crucial and basic level of capability, competence, and adherence to foundational corrections practices”;⁶¹
- staff fails to, for example: secure doors, gates, and cells; control ingress and egress to unauthorized areas or control access to other incarcerated persons for the purpose of doing harm; remain at assigned posts until relieved or given permission to depart;⁶²
- “deficiencies are normalized and embedded in every facet of the Department’s work,” including deficiencies in “Staff deployment, safety and security, [and] managing/supervising Staff”;⁶³
- The DOC “foundational patterns and practices . . . create an unsafe environment for incarcerated individuals and Staff,” including “[i]nadequate supervision of line Staff and facility leadership who do not possess the requisite expertise and ability to lead, . . . [s]taffing practices and procedures that have resulted in ineffective deployment across the agency, and . . . [l]imited, and extremely delayed, accountability for Staff misconduct”;⁶⁴ and

⁶⁰ Twelfth *Nunez* Monitor Report, at 8.

⁶¹ *Id.*

⁶² *Id.* at 17-18.

⁶³ *Id.* at 7.

⁶⁴ *Id.* at 11-12.

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- “the problem of inefficient Staff deployment” owes to the DOC’s “[a]ssigning of uniformed Staff to positions that are not consistent with the duties for which they were hired (*e.g.*, administrative tasks, data entry, secretarial support, time keeping, social service, analytics, etc.).”⁶⁵

Former Commissioner Schiraldi’s letter further shows the DOC’s awareness that it cannot protect incarcerated persons like the Petitioners. In the DOC’s own words, “*the risks to the human beings in our custody are at a crisis level.*” (emphasis added).⁶⁶ And certainly, the entry of an order against the DOC requiring it to provide medical attention should make it aware of the threats to incarcerated persons’ well-being caused by its failures.⁶⁷ And yet, the violence persists and the DOC has failed to address the medical treatment issue, despite being ordered to do so.

The New York City Board of Correction (the “Board”) “is a non-judicial oversight board that . . . establishes and ensures compliance with Minimum Standards regulating conditions of confinement and correctional health and mental health care in all City correctional facilities.”⁶⁸ Under New York City Charter Chapter 25, § 626(e), the Board has the duty to “establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department.” These duties include the establishment of minimum standards related to staffing levels and health care.⁶⁹ Such minimum standards help ensure for Efficient Staffing and adequate health of incarcerated persons.⁷⁰ Despite such legal

⁶⁵ *Id.* at 34-35.

⁶⁶ Ex. A.

⁶⁷ See *supra*, Section I(a) discussing the Order in *In re Agnew*, No. 813431-2021E (N.Y. Sup. Ct. Feb. 1, 2022), NYSCEF Doc. No. 86, where the DOC admitted to not complying with the Order to provide a adequate medical care for the incarcerated persons at Rikers.

⁶⁸ *Board of Correction*, N.Y.C. BD. OF CORR. (last accessed Jan. 18, 2022), <https://www1.nyc.gov/site/boc/index.page>.

⁶⁹ See 40 RCNY § 3-02.

⁷⁰ See 40 RCNY § 3-01(b)(1)-(4) (Board to establish minimum standards for medical treatment, care, and training); see also *id.* § 3-02 (minimum standards to guarantee that “Correctional personnel **shall never prohibit, delay, or cause to prohibit or delay an inmate’s access to care or appropriate treatment**” and “Staffing levels in the jail

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duties, as of November 2021, the New York City Board of Correction “issued no notices of violation since the pandemic began, not even after Board members documented ‘horrible’ conditions while investigating a death at Rikers in April.”⁷¹ The current situation at Rikers demonstrates that the Board’s indifference to the Effective Staffing failure constitutes a breach of its standard-setting obligations and has thus worsened the ongoing constitutional crisis.

DOCCS is responsible for detention facilities located in New York. The State Commission has a mission to provide for a safe, stable, and humane correctional system in New York State, and is required by the New York State Constitution and Regulations to inspect Rikers and ensure that it meets minimum standards.⁷² The State Commission is required to ensure Rikers conditions are sanitary, including by ensuring janitorial and maintenance services are provided.⁷³ If existing minimum standards inadequately serve the Rikers populace, then Section 45(16) of article 3 of the Correction Law of New York obligates the State Commission to “[a]dopt, amend or rescind such rules and regulations as may be necessary . . . to the performance of [its duties].” Moreover, the Commission may shut down a facility if they find unsanitary conditions and overcrowding at the facility. *See* Consolidated Laws of New York, ch. 43, art. 20, § 504. The ongoing humanitarian crisis demonstrates that DOCCS and the State Commission have failed in their oversight and standard-setting duties. Indeed, not only has the State Commission failed to monitor said

clinics, jail infirmaries and prison hospital wards **shall be adequate in numbers and types to insure that all standards described here are met. Staffing levels refers to both clinical and correctional personnel**”) (emphases added).

⁷¹ James Barron, *The Jail Oversight Board That Failed to Sound the Alarm*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/nyregion/board-of-corrections-jails-nyc.html>; N.Y. Const. art. XVII, § 5; N.Y. Comp. Codes R. & Regs. tit. 9.

⁷² *Commission of Correction*, N.Y., <https://scoc.ny.gov/index.htm>.

⁷³ N.Y. Comp. Codes R. & Regs. tit. 9, § 7506.1.

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conditions, but it also refused to discuss them: according to their published reports, not once did the State Commission discuss Rikers Island at its routine meetings over the course of Fall 2021.⁷⁴

Commissioner Molina, despite the reports from the *Nunez* Monitor and his public acknowledgment of the Effective Staffing failure, has actually taken action that will make the Effective Staffing crisis worse, not better. Commissioner Molina has rolled back restrictions on the DOC's oft-abused sick leave policy.⁷⁵ As a result, today, the DOC officers are no longer required to show proof of illness to earn a sick day (unless they seek to miss three consecutive days).⁷⁶ Commissioner Molina also fired the DOC's top internal investigator,⁷⁷ who had, among other things, aggressively investigated the DOC officers' use of force against incarcerated persons.

Furthermore, Commissioner Molina has incredible power, by virtue of New York law, to address the Effective Staffing crisis:

"He or she shall have the power and it shall be his or her duty to inquire into all matters connected with . . . correctional facilities. He or she shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility." N.Y. Correct. Law § 112.1.

And yet Commissioner Molina has done nothing to resolve the Effective Staffing failures of Respondents, and indeed has acted opposite to that end.

⁷⁴ Emily Gallagher, Opinion, *New York State is Failing at Jail Oversight; Here's How We Start to Fix It*, GOTHAM GAZETTE (Jan. 17, 2022), <https://www.gothamgazette.com/columnists/other/130-opinion/11033-new-york-state-fix-jail-prison-oversight>.

⁷⁵ This decision was made even after media reports suggest that staff members are abusing sick leave—nine officers were seen at a party after being absent due to sick leave. Graham Rayman, *Hundreds of Rikers Island correction officers abused sick leave*, N.Y. DAILY NEWS, Jan. 23, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-island-correction-officers-abusing-sick-leave-policies-covid-20220124-24qbfqnuizfzjfjavvumw2ys4-story.html>.

⁷⁶ Jacob Kaye, *DOC scales back 'punitive' sick leave policy*, QUEENS DAILY EAGLE, Jan. 6, 2022, <https://queenseagle.com/all/doc-scales-back-punitive-sick-leave-policy>.

⁷⁷ Jan Ransom, *Jail Unions Gain a Powerful Supporter: The New Mayor*, N.Y. TIMES, Jan. 14, 2022, <https://www.nytimes.com/2022/01/14/nyregion/rikers-jail-unions-eric-adams.html>.

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Mayor Adams is “responsible for the effectiveness and integrity of city government operations and shall establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility **including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor.**”¹ NYCC § 8(a) (emphasis added). Mayor Adams is thus legally responsible for the Effective Staffing failures rampant at Rikers Island and entrusted with the power to correct those failures. It is inconceivable that Mayor Adams is unaware of the present constitutional disaster on Rikers Island, but he has failed to take action to correct the Effective Staffing crisis at the root of those constitutional violations.

Because all Respondents are aware of the Effective Staffing crisis and have the responsibility and the power to act to correct for that crisis, but have continuously failed to do so, Petitioner Bell is likely to establish the *mens rea* prong of the deliberate indifference standard.

II. Petitioners Face Irreparable Harm

Respondents’ Effective Staffing failures subject Petitioners to imminent and irreparable harm. As discussed above and as documented heavily in the *Nunez* Monitor’s latest report, opinions of the New York Supreme Court, and the media, incarcerated persons at Rikers face continuous threats and actual acts of violence, fail to receive medical attention, live in unfathomably horrid and unsanitary conditions, and cannot get to court appearances. At any moment, violence can break out, and due to the Effective Staffing crisis, there is a near certainty of physical injury before any DOC staff will intervene. No medical attention is provided to those who are injured, in large part because of the lack of Effective Staffing. The conditions are so unsanitary and mismanaged that detainees are resorting to self-harm, and any new outbreak of

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COVID-19—such as the BA.2 subvariant of Omicron now beginning to spread⁷⁸—virtually guarantees high infection rates at Rikers. *See* Ex. A (Former Commissioner Schiraldi admitting crisis at Rikers due to Omicron variant). Further, without Effective Staffing, incarcerated persons, including Petitioners, face the prospect of missing court dates that weigh directly on their freedom and ability to get out of “horror island.”

Petitioner Bell in particular faces the actual risk of severe physical damage or even death. He suffered a gunshot wound to his head, and he requires that fluid be drained from his skull. Further trauma to his head could result in his death. He has already been attacked twice by other incarcerated inmates without any staff intervention. Any such future attack—which is a near certainty given the chaos reigning over Rikers—is essentially a game of Russian roulette that could end in Mr. Bell passing away.

Furthermore, Mr. Bell has suffered from asthma since childhood, which, according to the CDC, puts Petitioner Bell at a higher risk of severe illness from COVID-19 and other diseases caused by placement in confined, unsanitary conditions.⁷⁹ Even prior to the surge of the Omicron variant, Petitioner Bell suffered a severe asthma attack while on Rikers Island, for which he did not receive any medical attention for hours. In fact, even when he did receive medical attention, he was merely administered an intravenous with water. The medical staff did not give him an asthma pump or any other medication that would abate his asthma attack. Additionally, Petitioner Bell had to wait five months before the prison staff gave him access to his inhaler.

⁷⁸ Umair Irfan, *We Regret to Inform You That We Are Now Discussing Subvariants*, VOX (Feb. 10, 2022), <https://www.vox.com/22923891/omicron-subvariant-ba2-coronavirus>; Brenda Goodman, *As BA.2 Subvariant of Omicron Rises, Lab Studies Point to Signs of Severity*, CNN (Feb. 17, 2022), <https://www.cnn.com/2022/02/17/health/ba-2-covid-severity/index.html>.

⁷⁹ *See People with Certain Medical Conditions*, CTR. FOR DISEASE CONTROL & PREVENTION (Dec. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (listing moderate asthma as a chronic lung disease that is more likely to cause severe illness).

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Therefore, the ongoing constitutional crisis caused by Respondents' Effective Staffing failures represents an imminent risk of irreparable harm to Petitioners.

III. The Balance of the Equities Favors Petitioners' Request for a Preliminary Injunction

The balance of the equities weighs in favor of granting Petitioners' requested relief. Given the continuing lack of Effective Staffing at Rikers Island, the risk of irreparable injury to Petitioner Bell and those similarly situated far outweighs any potential interest that Respondents may have in continuing to admit new incarcerated persons to Rikers Island. This is especially so given the numerous alternatives to incarceration at Rikers that are available to Respondents. *See Verified Petition ¶ 77.*

Put simply, Petitioners face the prospect of grave injury or death. Respondents, on the other hand, must simply determine a way to avoid adding to the constitutional crisis while Effective Staffing—which, as discussed above and in the Verified Petition, is their *duty* to ensure—continues to elude Respondents. Respondents have the means and practical ability to find alternatives to further incarceration at Rikers during the pendency of this matter. The fact is that the Effective staffing crisis has caused ongoing constitutional violations to Petitioners and other detainees at Rikers for far too long, and Respondents should not be permitted to make this one bit worse until the crisis is addressed.

In short, nothing suggests that Effective Staffing issues at Rikers will improve, and thus the DOC's inability to provide adequate resources and protective measures there will not be remedied anytime soon. Petitioners' right to be free from severe injury or death outweighs Respondents' right to continue adding to a crisis of their own creation.

FILED: NEW YORK COUNTY CLERK 02/25/2022 01:11 PM

NYSCEF DOC. NO. 3

INDEX NO. 151715/2022

RECEIVED NYSCEF: 02/25/2022

For all the reasons discussed above, Petitioner Bell respectfully requests a preliminary injunction on behalf of himself and others similarly situated.

Dated: February 25, 2022

WINSTON & STRAWN, LLP

By: s/Krishnan Padmanabhan

WINSTON & STRAWN LLP

Krishnan Padmanabhan

Evan Miller

Sean Anderson

Zachary Bass

200 Park Avenue

New York, NY 10166

Tel.: 212-294-6700

Fax: 212-294-4700

Attorneys for Petitioners

FILED: NEW YORK COUNTY CLERK 02/25/2022 01:11 PM

NYSCEF DOC. NO. 3

INDEX NO. 151715/2022

RECEIVED NYSCEF: 02/25/2022

CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with N.Y.C.R.R. § 202.08-b(c).
2. The foregoing Memorandum of Law was prepared with word processing software, Microsoft Office 365, with Times New Roman typeface, 12-point font.
3. Relying on the word count of the word-processing system, the total number of words in this document, exclusive of the caption, table of contents, table of authorities, and signature block is 8140 words.

Dated: New York, New York
February 25, 2022

/s/Krishnan Padmanabhan
WINSTON & STRAWN LLP
Krishnan Padmanabhan
Evan Miller
Sean Anderson
Zachary Bass
200 Park Avenue
New York, NY 10166
Tel.: 212-294-6700
Fax: 212-294-4700

Attorneys for Petitioners

Applicant Details

First Name	Jane
Last Name	Black
Citizenship Status	U. S. Citizen
Email Address	janevblack@gmail.com
Address	<div> Address Street 1122 Red Rose Lane City Villanova State/Territory Pennsylvania Zip 19085 Country United States </div>
Contact Phone Number	2153706141

Applicant Education

BA/BS From	University of Pennsylvania
Date of BA/BS	May 2017
JD/LLB From	University of Pennsylvania Law School
	https://www.law.upenn.edu/careers/
Date of JD/LLB	May 15, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Edwin R. Keedy Cup

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Shanor, Amanda
shanor@wharton.upenn.edu
(203) 247-2195

Fisch, Jill E.
jfish@law.upenn.edu
(215) 746-3454

deLisle, Jacques
jdelisle@law.upenn.edu
215-898-5781

This applicant has certified that all data entered in this profile and any application documents are true and correct.

JANE BLACK

1529 Walnut Street, Apartment 1206, Philadelphia, PA 19102
(215) 370-6141 | bjane@pennlaw.upenn.edu

March 2, 2022

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to request your consideration of my application for a clerkship beginning in 2024. I am a third-year law student at the University of Pennsylvania Law School and a second-year M.B.A. candidate at The Wharton School of the University of Pennsylvania.

My prior professional experience and coursework support my goal of pursuing a career in litigation. Before law school, I was an investment banking credit analyst at Bank of America, where I underwrote trading and loan products issued to the world's largest financial institutions. After beginning my J.D. studies at Penn, I added the M.B.A. to obtain graduate academic training to supplement my finance work experience. My intention is that expanding the depth of my business knowledge will provide critical context to a wide variety of cases. I hope to use my dual degree to become an Assistant United States Attorney and then to work in securities law enforcement.

I enclose my resume, transcripts, and writing sample. Letters of recommendation from Professor Amanda Shanor (shanor@wharton.upenn.edu, 203-247-2195), Professor Jill Fisch (jfisch@law.upenn.edu, 215-746-3454), and Professor Jacques deLisle (jdelisle@law.upenn.edu, 215-898-5781) will follow under separate cover. Please let me know if any other information would be helpful.

Sincerely,



Jane Black

Encls.

JANE BLACK

1529 Walnut Street, Apartment 1206, Philadelphia, PA 19102
(215) 370-6141 | bjane@pennlaw.upenn.edu

EDUCATION

University of Pennsylvania Law School, Philadelphia, PA

J.D. anticipated, May 2022

- HONORS:* Comments Editor, *University of Pennsylvania Law Review*
Penn Law Mock Trial Competition, Tournament Best Prosecution Attorney & Team Finalist
- COMMENT:* *The First Amendment and Financial Regulation*
- ACTIVITIES:* Teaching Assistant to Professor deLisle for Torts, Fall 2020 and Spring 2021
PA 30 Day Covid Relief Fund, Coordinator
Penn Law Women's Association, Mentor
Boxing Club, Member
Golf Club, Member
- 2020 J.D./M.B.A. SUMMER COURSEWORK:*
Law & Economics of the Firm
Deals – Economic Structure of Transactions & Contracting
Bankruptcy
Professional Responsibility
Negotiations
Managing Established Enterprises

University of Pennsylvania Wharton School, Philadelphia, PA

M.B.A. anticipated, May 2022

University of Pennsylvania Fels Institute of Government, Philadelphia, PA M.P.A.,

August 2017

- HONORS:* Dean's List (all semesters)

University of Pennsylvania College of Arts and Sciences, Philadelphia, PA B.A.,

magna cum laude, Economics, May 2017

- HONORS:* Pi Sigma Alpha (Political Science National Honor Society)
Penn in Washington Scholar, Fall 2015
- ACTIVITIES:* Penn Club Lacrosse, Captain
West Philadelphia Tutoring Project
Women of Fels

EXPERIENCE

Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC

Summer Associate

May 2021 – July 2021

Legal research and writing in litigation practice.

Bank of America, Global Corporate & Investment Banking Wholesale Credit, New York, NY

Analyst (hired from 2016 Summer Intern Program)

July 2017 – July 2019

Underwrote trading and loan products issued to the world's largest financial institutions (banks, broker-dealers, central counterparties, and exchanges). Monitored client performance post-closing through communication with company senior management and internal analysis of financial performance and industry trends. Actively participated in client presentations, structuring transactions, financial modeling, and the evaluation of new financing opportunities. Served as Wholesale Credit Intern Program mentor and planning member of LEAD for

Women (Leadership, Education, Advancement, and Development) Network.

Securities and Exchange Commission, Washington, DC

Student Honors Business Intern

August 2015 – November 2015

Assisted with monitoring risk management practices of 60 top US Broker-Dealers. Participated in communication with firms to conduct due diligence and convey recommendations.

INTERESTS

Lifelong Golfer, Intermediate Boxer, Fan of U.S. Women's Track & Field

JANE BLACK
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL
THE WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts	deLisle, Jacques	A	4.00	
Contracts	Wilkinson-Ryan, Tess	A	4.00	
Civil Procedure	Wolff, Tobias B.	A-	4.00	
Legal Practice Skills	Duncan, Matthew	CR	4.00	Not offered as a graded course
Legal Practice Skills Cohort	Canelos, Nicholas	CR	0.00	Not offered as a graded course

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Shanor, Amanda	CR	4.00	Mandatory Credit/Fail
Criminal Law	Katz, Leo	CR	4.00	Mandatory Credit/Fail
Financial Regulation	Sarin, Natasha	CR	3.00	Mandatory Credit/Fail
Property Law	Balganesh, Shyamkrishna	CR	3.00	Mandatory Credit/Fail
Legal Practice Skills	Duncan, Matthew	CR	2.00	Mandatory Credit/Fail
Legal Practice Skills Cohort	Canelos, Nicholas	CR	0.00	Mandatory Credit/Fail

Summer 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law:				
Law and Economics of the Firm	Klick, Jonathan	A	3.00	
Professional Responsibility	Kosuri, Praveen	A	3.00	
Deals: Economic Structure of Transactions & Contracting	Knoll, Michael	A-	3.00	
Bankruptcy, Financial Distress, and Economic Crises	Skeel, David	CR	2.00	Not offered as a graded course
Business:				
Negotiations	Bhatia, Nazli	A-	3.00	
Managing the Established Enterprise	MacDuffie, John Paul	A-	3.00	

Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law:				
Corporations	Fisch, Jill	A-	4.00	
Trial Advocacy	Pratter, Gene Perricone, Thomas Henry, Catherine	CR	2.00	Not offered as a graded course
Law Review- Associate Editor	N/A	CR	1.00	
Business:				
Financial and Managerial Accounting	Guay, Wayne	A-	3.00	
Corporate Finance	Dieckmann, Stephan Kaufold, Howard	A-	3.00	
Microeconomics for Managers-Advanced	Selman, Deniz	A	1.50	
Foundations of Teamwork and Leadership	Grant, Adam	A	1.50	
Management Communication	Maia, Emilia	A	0.75	
Marketing Management	McCoy, John Patrick	B+	1.50	

Spring 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law:				
Federal Courts	Struve, Catherine	A	4.00	
Employment Law	Burke, Sean	A-	3.00	
Finance, Economics, and Law of Fiscal Crises	Skeel, David Inman, Robert	A-	3.00	
Independent Study	Shanor, Amanda	A	2.00	
Keedy Cup (Moot Court)	Gowen, Gayle	CR	1.00	Not offered as a graded course
Law Review- Associate Editor	N/A	CR	0.00	
Business:				
Strategy and Competitive Advantage	Marciano, Sonia	A	3.00	
Leading Diversity in the Organization	Creary, Stephanie	A	1.50	
Advanced Persuasive Speaking: Crisis Management	Maia, Emilia	A	0.75	

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law:				
Securities Law	Fisch, Jill Stein, Kara	A-	4.00	
Constitutional Criminal Procedure	Rudovsky, David	B+	3.00	
Economic and Regulatory Policy for Global Markets	Clayton, Jay	A-	3.00	
Law Review- Comments Editor	N/A	CR	2.00	Not offered as a graded course
JD/MBA Capstone 1: Initial Capital Raise	Pierce, Sarah Arvelo, Francis	CR	1.50	Not offered as a graded course
Business:				
Responsibility in Business	Skinner, Christina	A	1.50	
Business Analytics	Gans, Noah	A+	1.50	
Entrepreneurship	Wry, Tyler	A+	1.50	
Business of Behavioral Health	Candon, Molly	CR	1.50	
Healthcare Management for the Elderly	Whitman, John	A	1.50	

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law:				
Evidence	Rudovsky, David	NR	4.00	
Administrative Law	Lee, Sophia	NR	3.00	
JD/MBA Capstone 3: Restructuring	Pierce, Sarah Arvelo, Francis	NR	1.50	
Law Review- Comments Editor	N/A	NR	1.00	
Business:				
Managerial Decision Making	Simmons, Joseph	NR	3.00	
Entrepreneurship Through Acquisitions	Chalfin, Robert	NR	1.50	
Macroeconomics	Landry, Anthony	NR	1.50	
Leading Organization Change	Phillips, Damon	NR	1.50	
Dynamic Marketing Strategy	Reed, Americus	NR	1.50	

JANE BLACK

1529 Walnut Street, Apartment 1206, Philadelphia, PA 19102
(215) 370-6141 | bjane@pennlaw.upenn.edu

UNDERGRADUATE TRANSCRIPT

UNIVERSITY OF PENNSYLVANIA- B.A. ECONOMICS
FELS INSTITUTE OF GOVERNMENT AT THE UNIVERSITY OF PENNSYLVANIA- M.P.A.

AT THE UNDERGRADUATE LEVEL
* * * * * ACADEMIC PROGRAM * * * * *

Admitted From: MOUNT ST JOSEPH ACAD

School: ARTS & SCIENCES
Division: COLLEGE OF ARTS & SCIENCES
Degree Program: BACHELOR OF ARTS
Major: ECONOMICS
Minor: POLITICAL SCIENCE
Second Minor: STATISTICS

Submatriculation Program
School: ARTS & SCIENCES
Division: COLLEGE OF LIBERAL & PROF STUDIES
Degree Program: MASTER OF PUBLIC ADMINISTRATION
Major: GOVERNMENT ADMINISTRATION - FELS
Special Program: MPA FULL-TIME

* * * * * DEGREES AWARDED * * * * *

05-15-17 BACHELOR OF ARTS
MAGNA CUM LAUDE

* * * * * HONORS * * * * *

Dean's List 2015-16 2016-17

* * * * * UNIVERSITY OF PENNSYLVANIA COURSE WORK * * * * *

Fall 2013		COLLEGE OF ARTS & SCIENCES			
ECON	001	INTRO ECON MICRO	1.00	CU	A-
SPAN	121	ELEMENTARY SPANISH	1.00	CU	A
WRIT	040	WRITING SEMINAR IN ENVS:			
		LAW, ENVIRONMENT, IDENT	1.00	CU	A
		Term Statistics:	3.00	CU	GPA 3.90
		Cumulative:	3.00	CU	GPA 3.90
Spring 2014		COLLEGE OF ARTS & SCIENCES			
CLST	100	GREEK & ROMAN MYTHOLOGY	1.00	CU	B+
ECON	002	INTRO ECON MACRO	1.00	CU	B

PSCI	131	AMERICAN FOREIGN POLICY	1.00	CU	B+
PSYC	001	INTRO TO EXP PSYCH	1.00	CU	B+
SPAN	130	INTERMEDIATE SPANISH I	1.00	CU	A-
		Term Statistics:	5.00	CU	GPA 3.32
		Cumulative:	8.00	CU	GPA 3.54
Summer 2014					
COLLEGE OF ARTS & SCIENCES					
STAT	102	INTRO BUSINESS STAT	1.00	CU	A
		(Quantitative Data Analysis Course)			
		Term Statistics:	1.00	CU	GPA 4.00
		Cumulative:	9.00	CU	GPA 3.59
Fall 2014					
COLLEGE OF ARTS & SCIENCES					
ACCT	101	PRINCIPLES OF ACCOUNTING	1.00	CU	D
ECON	101	INTERMED MICROECONOMICS	1.00	CU	B
NURS	333	VICTIMOLOGY	1.00	CU	A
SPAN	140	INTERMEDIATE SPANISH II	1.00	CU	A-
STAT	430	PROBABILITY	1.00	CU	B-
		Term Statistics:	5.00	CU	GPA 2.88
		Cumulative:	14.00	CU	GPA 3.34
Spring 2015					
COLLEGE OF ARTS & SCIENCES					
ANTH	004	MDRN WRLD-CLTRL BKGND	1.00	CU	B+
ECON	103	STAT FOR ECONOMISTS	1.00	CU	B
		(Quantitative Data Analysis Course)			
NURS	332	FORENSIC SCIENCE I	1.00	CU	A
SOCI	200	CRIMINAL JUSTICE	1.00	CU	A-
STAT	471	INTERMEDIATE STATISTICS	1.00	CU	A-
		Term Statistics:	5.00	CU	GPA 3.54
		Cumulative:	19.00	CU	GPA 3.39
Summer 2015					
COLLEGE OF ARTS & SCIENCES					
ECON	104	ECONOMETRICS	1.00	CU	A-
GEOL	100	INTRO TO GEOLOGY	1.00	CU	A-
		(Quantitative Data Analysis Course)			
		Term Statistics:	2.00	CU	GPA 3.70
		Cumulative:	21.00	CU	GPA 3.42
Fall 2015					
COLLEGE OF ARTS & SCIENCES					
WASHINGTON SEMESTER					
COLL	098	Washington Semester Internship			
			1.00	CU	P
PSCI	330	THE POLITICS OF GOVERNMENT IN THE			
		WASHINGTON COMMUNITY	2.00	CU	A+
PSCI	398	PIW:COMMUNICAT.DILEMMA: Covering			
		politics and government with speed			
		and depth in an age of Twitter			
			1.00	CU	A
PSCI	398	PIW: THE U.S. PRESIDENCY: Limits			
		on Chief Executive Power	1.00	CU	A
		Term Statistics:	5.00	CU	GPA 4.00
		Cumulative:	26.00	CU	GPA 3.51
Spring 2016					
COLLEGE OF ARTS & SCIENCES					
ECON	102	INTERMED MACROECONOMICS	1.00	CU	A
ECON	234	LAW AND ECONOMICS	1.00	CU	A
GEOL	125	EARTH THROUGH TIME	1.00	CU	A

		(Quantitative Data Analysis Course)			
HIST	171	AMERICAN SOUTH 1861-PRES	1.00	CU	A
STAT	470	DATA ANALY & STAT COMP: Data			
		Analytics and Statistical			
		Computing	1.00	CU	A
		Term Statistics:	5.00	CU	GPA 4.00
		Cumulative:	31.00	CU	GPA 3.59
Fall 2016					
COLLEGE OF ARTS & SCIENCES					
ECON	232	POLITICAL ECONOMY	1.00	CU	A
ECON	236	HEALTH ECONOMICS	1.00	CU	A-
GAFL	509	WHO GETS ELECTED AND WHY: THE			
		SCIENCE OF POLITICS	1.00	CU	A
GAFL	531	Data Science for Public Policy			
			1.00	CU	A
GAFL	732	PUBLIC MANAGEMENT	(1.00)	CU	A+
		Term Statistics:	4.00	CU	GPA 3.93
		Cumulative:	35.00	CU	GPA 3.63
Spring 2017					
COLLEGE OF ARTS & SCIENCES					
ECON	233	LABOR ECONOMICS	1.00	CU	B+
GAFL	502	PUBLIC COMMUNICATIONS	1.00	CU	A
GAFL	515	Public Financial Leadership in the			
		New Fiscal Reality	(1.00)	CU	A
GAFL	631	Policy Making and Public			
		Institutions	(1.00)	CU	A-
GAFL	651	Public Financial Management			
			(1.00)	CU	A
		Term Statistics:	2.00	CU	GPA 3.65
		Cumulative:	37.00	CU	GPA 3.63
		Equivalent Credit:	4.00	CU	
		Total Credit:	41.00	CU	
* * * * * PENN EQUIVALENT CREDIT * * * * *					
Advanced Placement Credit:					
		HIST 42	1.00	CU	
		MATH 104	1.00	CU	
		STAT 111	1.00	CU	
External Transfer Credit:					
		VILLANOVA UNIVERSITY	MATH 114	1.00	CU
Total Penn Equivalent Credit Awarded:					
			4.00	CU	
* * * * * NO ENTRIES BEYOND THIS POINT * * * * *					

AT THE GRADUATE LEVEL IN ARTS & SCIENCES
 * * * * * **ACADEMIC PROGRAM** * * * * *

School: ARTS & SCIENCES
 Division: COLLEGE OF LIBERAL & PROF STUDIES
 Degree Program: MASTER OF PUBLIC ADMINISTRATION
 Major: GOVERNMENT ADMINISTRATION - FELS
 Special Program: MPA FULL-TIME

* * * * * **DEGREES AWARDED** * * * * *

08-04-17 MASTER OF PUBLIC ADMINISTRATION

* * * * * **UNIVERSITY OF PENNSYLVANIA COURSE WORK** * * * * *

Fall 2014 COLLEGE OF ARTS & SCIENCES

STAT	430	PROBABILITY	1.00	CU	B-
		Term Statistics:	1.00	CU	GPA 2.70
		Cumulative:	1.00	CU	GPA 2.70

Spring 2015 COLLEGE OF ARTS & SCIENCES

STAT	471	INTERMEDIATE STATISTICS	1.00	CU	A-
		Term Statistics:	1.00	CU	GPA 3.70
		Cumulative:	2.00	CU	GPA 3.20

Spring 2016 COLLEGE OF ARTS & SCIENCES

STAT	470	DATA ANALY & STAT COMP: Data Analytics and Statistical Computing			
			1.00	CU	A
		Term Statistics:	1.00	CU	GPA 4.00
		Cumulative:	3.00	CU	GPA 3.47

Fall 2016 COLLEGE OF ARTS & SCIENCES

G AFL	509	WHO GETS ELECTED AND WHY: THE SCIENCE OF POLITICS	1.00	CU	A
G AFL	531	Data Science for Public Policy	1.00	CU	A
G AFL	732	PUBLIC MANAGEMENT	1.00	CU	A+
		Term Statistics:	3.00	CU	GPA 4.00
		Cumulative:	6.00	CU	GPA 3.73

Spring 2017 COLLEGE OF ARTS & SCIENCES

G AFL	502	PUBLIC COMMUNICATIONS	1.00	CU	A
G AFL	515	Public Financial Leadership in the New Fiscal Reality	1.00	CU	A
G AFL	631	Policy Making and Public Institutions	1.00	CU	A-
G AFL	651	Public Financial Management	1.00	CU	A
		Term Statistics:	4.00	CU	GPA 3.93
		Cumulative:	10.00	CU	GPA 3.81

Summer 2017 COLLEGE OF LIBERAL & PROF STUDIES

G AFL	528	Critical Issues in Public Finance	1.00	CU	A-
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GAFL	799	MPA CAPSTONE	1.00	CU	A-
		Term Statistics:	2.00	CU	GPA 3.70
		Cumulative:	12.00	CU	GPA 3.79
* * * * * NO ENTRIES BEYOND THIS POINT * * * * *					

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 02, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Re: Clerkship Applicant Jane Black

Dear Judge Liman:

I am writing to enthusiastically support Jane Black's clerkship application.

I had the great pleasure of teaching Jane in my Constitutional Law class at the University of Pennsylvania Carey Law School during her first year. Jane is smart as a tack. She has the analytical chops of a sharp litigator, and I know she will be a fantastic clerk.

The course Jane took is a critical introduction to the fundamental concepts and institutions of American constitutional law. In one semester, it covers both structure and rights—and so ranges from separation of powers, federalism, and the role of the courts in the interpretation and enforcement of the Constitution to equal protection and due process. The course aims to convey to students the dynamism and larger arc of American constitutional law, including its history, context, and paths not taken.

I was thoroughly impressed with the way in which Jane tackled the material. Her final exam was excellent. Her issue spotter answers were precise and deeply analyzed, and she adeptly captured the arc and abiding questions of U.S. constitutional law. Her writing was superbly clear and well-structured even under sharp time pressure. She wrote her final essay on the Civil Rights Cases and the lost promise of the Thirteenth and Fourteenth Amendments. She argued that had the Court taken a different path “some of the deeply entrenched disadvantages to African Americans in this country would have had a 90-year head-start” and legislation advancing equality could run, as she argued it should, under the enforcement clauses of the Reconstruction Amendments rather than the Commerce Clause.

In addition to the final exam, students posted brief memoranda on Canvas ten times during the semester. I instructed students to raise questions in the memos about the assertions and logic of the course materials and opposing students' views and to draw out larger themes and puzzles from the cases. Jane's posts were terrific. She incisively identified and critiqued holes in the reasoning of cases and theories, and ably connected doctrine to its real-world effects. Among my 1Ls, Jane was one of the most likely to approach questions as one would if litigating them—considering possible doctrinal and practical arguments and their strengths and weaknesses.

Jane's contributions to class discussion were superb; she was consistently insightful and astute, for example making connections between property and constitutional law. Jane's oral skills are like her writing: she balances nuance with clarity and concision.

Jane is a lawyer's lawyer—I say as an appellate litigator myself, who highly values that quality. It's not surprising that Jane has done so well in law school and will be a summer associate in Wilmer-Hale's DC office this summer.

For all of these reasons, I agreed to supervise her law review note. Jane's background is in banking, and she is pursuing a joint JD/MBA at the Wharton School. In my class, she became interested in constitutional law and its transformations. She decided to write on the potential conflict between the increasingly libertarian First Amendment and core pillars of securities law that could be understood as speech-regulating: insider trading and securities advertising. Despite not having taken a First Amendment course, Jane tackled difficult cases and doctrines with aplomb, and wrote a thoughtful piece on why those regulations should not be understood to violate the First Amendment. I hope the Law Review chooses to publish the piece: it would be useful to securities litigators and academics alike.

Jane aims to become an Assistant U.S. Attorney and ultimately work at Main Justice or the Securities and Exchange Commission. She hopes that her background in banking and understanding of economics and securities markets will allow her to excel as a litigator working on related matters. I have no doubt she will. Jane's a powerhouse.

Jane is also a lovely person to be around. In class and outside of it, Jane was thoughtful and generous even when conversation became heated. She's slightly formal and always tactful, in the way you might imagine a white shoe lawyer to be—but that belies her silly humor and easy laugh. She's a hoot, and even more so because at first you don't expect it. I'm sure those qualities, and her combination of intellect and conscientiousness, contributed to why her peers voted her on the Executive Board of the Law Review. They are also qualities that will endear her to her judge and co-clerks.

I am certain Jane will be a sharp, top-notch clerk. I hope you will give her that opportunity.

Please do not hesitate to contact me if I can provide additional information, or if I can be of assistance in any other way.

Amanda Shanor - shanor@wharton.upenn.edu - (203) 247-2195

Sincerely,

Amanda Shanor
Shanor@upenn.edu
(203) 247-2195

Visiting Professor
The University of Pennsylvania Carey Law School

Assistant Professor
The Wharton School of the University of Pennsylvania

Amanda Shanor - shanor@wharton.upenn.edu - (203) 247-2195

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 02, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Re: Clerkship Applicant Jane Black

Dear Judge Liman:

It gives me great pleasure to recommend Jane Black, Penn Law JD/MBA Class of 2022, for a clerkship in your chambers. Ms. Black was my student in corporations during the Fall 2020 academic term and in securities regulation during the Fall 2021 term. Ms. Black received an A- in both classes. This grade (and my grades adhere to the law school curve) reflected both her active and thoughtful contributions during class and the fact that she wrote excellent exams. I note that these grades are consistent with Ms. Black's outstanding academic record at Penn. That achievement is even more impressive given Ms. Black's enrollment in the accelerated three-year JD/MBA program and the heavy course load that she has taken pursuant to that program. I note that Ms. Black's Wharton grades are also superb.

Law school has presented particular challenges over the past two years because of the pandemic, including hybrid classes, mandatory masking, and office hours on the roof. The students have had to navigate complex covid protocols in addition to their regular coursework. In this difficult setting, Ms. Black was an absolute pleasure to have in class – she was engaged, upbeat and highly professional. Over the course of the past year and a half, I have gotten to know Ms. Black fairly well. She is engaged in and excited by business and business law; she is a hard worker, and she stands out for her thoughtfulness and maturity. She is also able to balance academics with non-academic interests – her participation in the Penn Boxing Club is an example. I think she would be a pleasure to have in chambers.

Ms. Black brings a unique mix of business and legal skills to a prospective clerkship. The Wharton MBA program builds upon her work at Bank of America prior to law school and has strengthened her skills in finance and accounting. Her MBA classes also give Ms. Black training in leadership, teamwork and public advocacy, skills that readily translate to the legal environment. That being said, Ms. Black is planning to pursue a career in litigation. Her position as comments editor for the Law Review, her success in the Mock Trial competition, and her work as a Torts TA are testament to her strong interest in a career in the law. I know that she found her summer at Wilmer Cutler rewarding, and that her long term career plans include the possibility of government service at the U.S. Securities & Exchange Commission. A clerkship would therefore be an incredibly valuable opportunity for her. In my opinion, Ms. Black's business skills, as well as the time management skills she has demonstrated through her success in the demanding three-year JD/MBA program, will be a tremendous asset for her in litigation and will, I expect, make her a valuable resource in a clerkship as well.

In sum, I enthusiastically recommend Ms. Black for a clerkship in your chambers. I would be delighted to speak with you and to answer any questions that you might have.

Sincerely,

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UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 02, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Re: Clerkship Applicant Jane Black

Dear Judge Liman:

I support, with great enthusiasm, Jane Black's application for a clerkship. Jane has excelled at Penn and will do the same as a law clerk. She has demonstrated, in abundance, the qualities that, were I a judge, I would want to see in a clerk.

Jane was a student in my Torts section (approximately forty-five students) during her 1L year. She wrote one of the two best exams in the class—and an exam that would have been among the top few in any of the twenty-plus times I have taught the course. In class, she was that rare student who always “gets it”—not only unfailingly well-prepared but also impressively quick to see the point of the discussion and where it was going. More than most students who perform at that high level, she also had a quiet confidence in expressing her views and answering or asking questions. More than other students with similar intelligence and grasp of the material (of which there are few), she was unusually good at the vital lawyerly function of triage—of distinguishing what is important from what is less so, which arguments are worth pursuing and which are not.

My high regard for Jane's talents and work is also reflected in my having her be my teaching assistant for the two iterations of Torts that I taught during her 2L year. I have long been skeptical of TAs in required first-year courses (and law school courses generally). Jane—who is only the second TA I have had for Torts—has convinced me that it can be a very good idea. In her TA work, Jane continued to show the skill and dedication that had made her such an excellent student the preceding year...and much more. Because we talked about the substance of the course much more than an instructor can with any one student in a course (even in a small section), I understood, even more clearly, how deeply interested and enthusiastic Jane is about finding and figuring out the puzzles of tort law—discerning the contradictions and ambiguities and working with them (including, in this context, helping to convey them to students in the course).

What has made Jane such an outstanding TA are attributes that go beyond those of a top-flight student who also is able to explain to, and answer questions from, students—almost all of whom have more difficulty with the material than she does. She also was able to discern and report back to me, clearly, succinctly, and helpfully, what students were understanding and what they were not, and, often, why. She was accurate and meticulous in distinguishing between questions from students that she could answer and those that she needed to refer back to me. Although she knows a lot, she also knows what she does not know, and she knows the difference between uncertainty or confusion among students that a TA can address and other questions that are more matters of pedagogy and course goals and “big picture understanding” of the course that need to be discussed with, and sometimes left to, the professor.

I have heard from many students in the course that Jane also was extremely helpful on the more practical and procedural side of the course—how to approach reading, studying, and outlining, how to prepare for class, separate the important from the peripheral, how to approach the exam, and so on. That was, of course, all good for the students—in the two semesters that she served as my TA, I had significantly fewer truly weak exams than in previous years. And it also shows, in a different context, Jane's ability to see the forest for the trees—to see the big picture, to solve the puzzle. She struck exactly the right note in her interactions with me, always appropriately respectful but never excessively deferential, and not hesitant to report when something had not worked well in class. She also did an excellent job taking a first cut at grading (based on a rubric provided to her) the practice midterm. I made only minor adjustments to her scores and comments when I took a second pass at the students' essays.

As a TA, she also showed impressive abilities of organization, focus on tasks, and efficiency. (I expect these also are factors in her having done so well in our highly demanding JD-MBA program while also being very actively engaged in several diverse co-curricular and extracurricular activities, often in leadership roles.) To give a perhaps trivial but illustrative example, each time that I would need information on preferences from the class (when to hold the practice midterm or a review session, preferences for a slightly longer or shorter exam, when to reschedule a class), I would receive from Jane—promptly—a pie chart or bar graph of responses to a well-designed Doodle poll (including reflecting students' ranked preferences where there were more than two choices). She also managed without a glitch the logistically complex and potentially fraught process whereby—in our COVID-driven hybrid model of instruction had half the students in the classroom one day per week (with the others on Zoom) and the other half in the classroom the other day—we allocated empty seats each week (due to last minute absences for illness, schedule conflicts, COVID exposure and so on) to students interested in attending on the “opposite” day in our capacity-limited, social-distance-compliant classroom.

Jane is also highly regarded by her peers. As I noted above, the students in this year's Torts sections praised her helpfulness—on substance and process—and also her manner and good cheer and ability to calm their nerves. When I ran into a few of her

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